

PUBLIC CONSULTATION DOCUMENT

Pillar One – A Tax Certainty Framework for Amount A

27 May – 10 June 2022



Table of contents

Background	2
A Tax Certainty Framework for Amount A	5
Part One – Overview of a possible Amount A Tax Certainty Framework	5
Part Two – Detailed descriptions of each element of a possible Tax Certainty Framework	11
I. Certainty over whether a Group is a Covered Group	11
1. <i>A Scope Certainty Process to determine whether a Group is a Covered Group</i>	11
II. Certainty over a Covered Group’s application of the convention	25
2. <i>Requests for Certainty by a Covered Group</i>	25
3. <i>Certainty Reviews by a Review Panel on behalf of the Parties</i>	29
4. <i>Review by a Lead Tax Administration on behalf of the Parties</i>	49
III. A Determination Panel to resolve disagreements	50
5. <i>Resolution of disagreements by a Determination Panel</i>	50
6. <i>Composition of a Determination Panel</i>	59
IV. The withdrawal of a request for certainty and Certainty Outcomes	73
7. <i>Withdrawal of a request for certainty</i>	73
8. <i>Certainty Outcomes</i>	74
V. Other provisions	76
9. <i>Process for a review where a request for certainty is not made</i>	76
10. <i>A support function for the Tax Certainty Framework</i>	79
11. <i>Definitions</i>	80

Background

Introduction

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

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

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.

A Tax Certainty Framework for Amount A

A central element of Amount A is an innovative Tax Certainty Framework which guarantees certainty for in-scope groups over all aspects of the new rules, including the elimination of double taxation. This eliminates the risk of

uncoordinated compliance activity in potentially every jurisdiction where a group has revenues, as well as a complex and time-consuming process to eliminate the resulting double taxation. The Tax Certainty Framework incorporates a number of elements designed to address different potential risks posed by the new rules.

- A Scope Certainty Review, to provide an out-of-scope Group with certainty that it is not in-scope of rules for Amount A for a Period, removing the risk of unilateral compliance actions.
- An Advance Certainty Review, to provide certainty over a Group's methodology for applying specific aspects of the new rules that are specific to Amount A, which will apply for a number of future Periods.
- A Comprehensive Certainty Review to provide an in-scope Group with binding multilateral certainty over its application of all aspects of the new rules for a Period that has ended, building on the outcomes of any advance certainty applicable for the Period.

All three of these elements are supported by a binding process to resolve any disagreements that arise. In each case this guarantees certainty to groups which act in a cooperative and transparent manner.

This document contains a description of each of these elements, as well as the implications of being granted a “certainty outcome” over Amount A and of withdrawing from a certainty review process. Where a group has not requested certainty, there are still benefits from multilateral cooperation between tax administrations to promote consistency in the interpretation and application of rules on Amount A, so the Framework also includes a possibility for tax administrations to participate in a voluntary process in these cases. Finally, a secretarial support function is contemplated, to support the effective and efficient running of the Tax Certainty Framework and reduce the burden on tax administrations by undertaking administrative, clerical and coordination functions.

While largely written using operative language for clarity, the text in this document does not constitute draft Model Rules as is the case in other public consultations on aspects of Amount A. Instead, once the structure and operation of the different elements of the Tax Certainty Framework has been consulted on and agreed, work will begin to translate parts of the text in this document into Model Rules, into language for a Multilateral Convention on Amount A, or into other agreements and tools as the case may be. The text also includes a number of timeframes for different steps in each element of the Tax Certainty Framework which are in square brackets. These timeframes are indicative, and generally ambitious, and will be updated as the steps of each element are agreed by the TFDE. Finally, in-scope Groups will also benefit from dispute resolution mechanisms to avoid double taxation due to issues related to Amount A (e.g. transfer pricing and business profits disputes), in a mandatory and binding manner. This process has been included in a separate public consultation document ([Tax Certainty for Issues Related to Amount A](#)) released concurrently with this document.

The full Amount A package, including certain key building blocks associated with tax certainty (e.g. revised revenue sourcing rules, segmentation, elimination, and the marketing and distribution profits safe harbour) have not been released for consultation yet, and it is recognised that this public

consultation document cannot on its own provide a full picture on the topics for which certainty will be provided. The relevant building block consultations are forthcoming, recognising the interactions between those building blocks and tax certainty and the value of comments on those interactions.

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 structure and operation of the Tax Certainty Framework for Amount A, 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. Furthermore, explanatory footnotes are included in the document to assist public commentators in reviewing the substantive proposal, and highlight differing views.

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 on how tax certainty can be provided to groups in the first years of applying rules on Amount A; on identifying areas where groups have a particular need for greater certainty that are not addressed in the proposed Tax Certainty Framework; or on improving the efficiency and effectiveness of elements of this Framework, noting the importance of all tax administrations affected by a group's application of Amount A having the opportunity to participate in a certainty process.

Interested parties are invited to send their comments on this discussion draft no later than **10 June 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.

While this consultation document has been released concurrently with the consultation document on [Tax Certainty for Issues Related to Amount A](#), commentators are asked to submit comments on each consultation document separately, and not to combine comments in a single submission.

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.

A Tax Certainty Framework for Amount A

PART ONE – OVERVIEW OF A POSSIBLE AMOUNT A TAX CERTAINTY FRAMEWORK

1. Restoring the stability of the international tax system is one of the key objectives of the Pillar 1 agreement. Ensuring tax certainty on the new taxing right, referred to as Amount A, is core to this effort of stabilisation. It will come together with ensuring tax certainty for issues relating to Amount A, such as transfer pricing adjustments. Tax certainty will be provided through a detailed framework developed in this document, based on the Inclusive Framework October Statement :

“In-scope MNEs will benefit from dispute prevention and resolution mechanisms, which will avoid double taxation for Amount A ... in a mandatory and binding manner.”

2. A comprehensive solution to provide certainty to a Group over all aspects of Amount A, including whether it is in-scope, is essential to make the new regime effective, efficient and administrable both for the Groups themselves and for tax administrations. Amount A operates by applying a single set of rules to the global revenues and profits of a Group, subject to limited exclusions. Having these rules enforced unilaterally in each jurisdiction through domestic risk assessment and tax audit would be costly and time consuming for Groups and tax administrations, involving massive duplication of work undertaken in each jurisdiction, even in cases where no adjustments arose. In the event tax administrations did reach different views and proposed adjustments to a Group’s tax returns, double taxation could arise involving not just two jurisdictions but potentially every jurisdiction in which a Group sources revenue. To resolve the resulting disputes through traditional tools such as the mutual agreement procedure (MAP) would be unimaginably complex, even if ultimately certainty was assured through mandatory binding dispute resolution. Therefore a new, innovative approach is needed, which combines elements of dispute prevention and dispute resolution in a structured, binding process that provides certainty to Groups in a timely manner which is also resource-efficient for tax administrations.

3. The Tax Certainty Framework described in this note contains three mechanisms to provide certainty over aspects of Amount A, each of which is voluntary on the part of Groups. In each of these, the Lead Tax Administration, typically the tax administration of the Group’s Ultimate Parent Entity, plays a key role in coordinating the process and engaging with the Group. These mechanisms are:

- **A Scope Certainty Review.** A process to provide an out-of-scope Group with certainty that it is not in-scope of rules for Amount A for a Period, removing the risk of unilateral compliance action in jurisdictions where it sources revenues.

- **An Advance Certainty Review.** A process to provide certainty over a Group's methodology for applying aspects of the new rules that are specific to Amount A, which will apply for a number of future Periods. This would be available for a Group's methodology for revenue sourcing, including its categorisation of revenues, choice of reliable method and its internal control framework. Advance Certainty may also be available for a Group's methodology for applying segmentation, where this is relevant to the calculation of profit before tax for the purposes of rules on Amount A.
- **A Comprehensive Certainty Review.** A process to provide an in-scope Group with binding multilateral certainty over its application of all aspects of the new rules for a Period that has ended, based on a standardised Common Documentation Package and building on the outcomes of any advance certainty applicable for the Period. This will guarantee a consistent treatment of the Group and the full elimination of double taxation in all Parties to the Convention for Groups who cooperate in the process and accept the outcomes of a review.

4. All three of these mechanisms are supported by a binding Determination Panel process to resolve any disagreements that arise. In each case this guarantees certainty to Groups which act in a cooperative and transparent manner. In addition, the Inclusive Framework is considering a transitional process to apply for a specific limited period, described below, to support an in-scope Group in applying the new rules and ensure a soft-landing where a Group has made reasonable efforts as to its approach to revenue sourcing.

5. Even in the unlikely case that a Group does not request certainty over its application of Amount A, there is still a benefit if compliance activity by tax administrations is coordinated, reducing the risk of unrelieved double taxation and disputes. Therefore, the Tax Certainty Framework also includes a possibility for tax administrations to agree to work multilaterally and agree a common approach through a coordinated review in the absence of a request.

Certainty over whether a Group is in-scope of rules on Amount A

6. In particular in the first years of applying rules on Amount A, there is a risk that Groups which are not in fact in-scope are nevertheless subject to enquiries in multiple jurisdictions by tax administrations that believe they may be in-scope (e.g. because the Group has total annual revenues above the threshold in its published financial statements, before application of rules on excluded revenues). The certainty process for a Scope Certainty Review will provide these Groups with the possibility to ask for binding certainty that they are out-of-scope, removing this risk.

7. A Group would submit a request for a scope review to its Lead Tax Administration as soon as it has sufficient information to support its case, which may be shortly after the release of its financial statements for the year. This would include a list of Parties to the multilateral convention (the Listed Parties) from which the Group is seeking certainty and which will be asked to agree whether the Group is in scope. Where a particular Party is not included on this list it may submit a proposal to be added, together with an explanation as to why it would be affected by the outcomes of the review (for example, if it has evidence that the Group has revenues in its jurisdiction and is concerned that the Group may in fact be in-scope). If the Group does not agree to adding the Party, it is expected to explain its reason for this and the Lead Tax Administration may nevertheless require the Party to be added to the list if it considers that the Party has a reasonable basis for being included. The Group's request for a Scope Certainty Review should be accompanied by a Scope Certainty Documentation Package, containing information on the application of rules on Amount A relevant to determining whether a Group is within scope, but

would not need to include any information needed to apply other aspects of Amount A, such as rules on revenue sourcing or the elimination of double taxation.

8. If the Group considers it is outside the scope of Amount A rules, but in determining this it is required to apply particular aspects of these rules, such as those on excluded revenues or segmentation, a review would be undertaken by a Scope Review Panel of tax administrations, coordinated by the Lead Tax Administration. On the other hand, if a Group is out-of-scope because its total revenues and profitability are below the relevant thresholds and specified rules do not apply, the review would be undertaken by the Lead Tax Administration. In each case, the outcomes of the review are shared with tax administrations in all Listed Parties, which have the opportunity to raise concerns and suggest alternative outcomes. Any disagreements between members of a Scope Review Panel or between Listed Parties would be sent to a Determination Panel for a final outcome. Thus, in all cases, the process concludes with certainty for the Group. If this certainty is a decision that the Group is not in-scope, this is binding on all Listed Parties. If, on the other hand, the outcome is a decision that the Group is in-scope, the Group should file a complete Amount A Common Documentation Package and may then pursue the Comprehensive Certainty Review Process described below.

9. If a Scope Certainty Review was undertaken by a Scope Review Panel and, in a subsequent year, a Group wishes to obtain certainty that it remains out-of-scope, a high level follow-up review based on simplified documentation would be available, which will focus on changes that have occurred to a Group's structure, activities, results and other relevant circumstances to determine whether the Group remains out-of-scope. Where this process concludes that the Group does remain out-of-scope, the Group will not be required to take any further steps and this outcome will be binding on all Listed Parties. Where the process cannot conclude that the Group remains out-of-scope on the basis of simplified documentation, the Group may still demonstrate that it is in fact out-of-scope by providing the full Scope Certainty Documentation Package for review.

Advance Certainty

10. A practical and reliable mechanism for sourcing revenues to market jurisdictions is a critical feature of the new rules, both in terms of identifying which jurisdictions have a taxing right (based on a revenue threshold) and determining the amount of profit before tax to be allocated to those jurisdictions (using a formula based on the source of its in-scope revenues). Ensuring that a Group's methodology for identifying the source of its revenues is reliable, and doing so early, is therefore essential both for the Group and for coherent tax administration as,

- from the perspective of a Group, implementing a system based on the new rules may be a time consuming and possibly costly process – any requirement to introduce changes to such a system later if tax administrations do not agree the Group's chosen methodology is correct will take more time and involve more cost, and
- from the perspective of a tax administration, if it is found that a Group's methodology is not correct as part of a review undertaken after the filing of a tax return, it may be too late for the Group to obtain and provide data for the same year using a different approach, and this issue may continue for at least the next year (which is likely to have already ended).

Reviewing a Group's proposed methodology for revenue sourcing, and agreeing this approach or identifying and agreeing any changes that are needed, will reduce both of these risks.

11. Comparable benefits could arise from applying the same approach to some other aspects of the new rules, such as a Group's methodology for applying rules on segmentation, to the extent this is required for the purposes of Amount A.

12. As rules for Amount A are introduced, a transitional approach is being considered by the Inclusive Framework, recognising the challenges Groups are likely to face in building new systems to comply with Amount A, in particular with respect to revenue sourcing, and the inevitable learning and refinements that will be needed. Two concepts are being explored, which would apply for a defined, limited period, after which Groups will be expected to apply all aspects of rules for Amount A correctly and in full. One is that a "soft landing" could be provided, under both the process for Comprehensive Certainty and Advance Certainty. This would mean that provided the Group made reasonable efforts to reflect a correct application of the revenue sourcing rules, the filing would be accepted with the comfort that no changes will be required. The Group would also be provided with guidance in this transitional period as to how it could more accurately apply the revenue sourcing rules in future. In addition, the Inclusive Framework is exploring providing the ability for a Covered Group to have easier access to Allocation Keys in the short-term, which may be relevant in particular before systems are ready to apply the revenue sourcing rules.

13. At the same time, it is recognised that there are other, non-binding ways to support Groups in complying with the revenue sourcing rules even in advance of Amount A coming into effect and until the first filing of Amount A Common Documentation. The Inclusive Framework is also considering how to facilitate this, which could include structured engagement and feedback from tax administrations on areas of uncertainty or where support is needed, as well as guidance, FAQs, model templates and other practical tools. Guidance for tax administrations on how to undertake an effective and efficient review of a Group's application of the new rules will also be needed.

14. A Group's first request for Advance Certainty would be made when it files its Common Documentation Package for first year of Amount A. The Advance Certainty Review Process involves a review of a Group's proposed methods and controls undertaken by a Review Panel including the Lead Tax Administration and a number of tax administrations from Parties in which a Group has in-scope revenues or which provide relief for double taxation, selected at random from those that expressed interest. Given the particular nature of this review, which will require analysis of a Group's control framework, business and financial management systems and enterprise resource planning software, the Review Panel will also rely on the recommendations of an Expert Advisory Group of tax officials, who meet agreed criteria in terms of their training and experience in undertaking systems reviews and audits.

15. Where a Group's proposed approach is accepted, certainty will apply for a set number of future years, so long as there is no relevant change. Where necessary improvements to a Group's existing internal control framework are identified as part of the review, this certainty will apply once these improvements have been implemented and confirmed. Where the Review Panel does not reach agreement, or where an agreement proposed by the panel is not accepted by tax administrations in parties affected by the Group's application of rules on Amount A, disagreements will be referred to a Determination Panel for a final outcome.

Comprehensive Certainty over the calculation and allocation of profit before tax and the elimination of double taxation

16. A key element of the Tax Certainty Framework for Amount A is a structured, comprehensive, review of each relevant aspect of an in-scope Group's application of rules on

Amount A, resulting in an outcome which is binding on all Parties to the Convention. This ensures that tax administrations in all jurisdictions will accept the same approach by a Group to the calculation and allocation of Amount A and the elimination of double taxation, with no need for domestic audits and no risk of unrelieved double taxation.

17. The first time a Group makes a request for Comprehensive Certainty, the review would be conducted by a Review Panel of tax administrations, including the Lead Tax Administration and those from Parties in which a Group has in-scope revenues or which provide relief for double taxation, selected at random from those that expressed interest. To reduce the resource burden on tax administrations, subsequent reviews would be conducted by the Lead Tax Administration, with a Review Panel being established to undertake a review after [five] years or in specific circumstances. A Review Panel will be supported by an Expert Advisory Group of systems specialists that will provide advice as to the reliability of the Group's internal control framework. While a review is undertaken by a Review Panel or the Lead Tax Administration, these act on behalf of all Parties to the Convention, which are kept informed and can provide input, raise concerns, and suggest alternative outcomes to address disagreements.

18. A Comprehensive Certainty Review of an in-scope Group involves two phases, recognising that certain steps in the Amount A process build on other steps. For example, the quantum of a Group's profit before tax needs to be established before the allocation formula can be applied to determine how much of that profit before tax should be allocated to a particular market jurisdiction. As such, a Review Panel or Lead Tax Administration will first consider issues assigned to the first phase of a review. It may then seek comments and agreement from Affected Parties, and resolve any disagreements, before progressing to a second phase. Alternatively, a Review Panel or Lead Tax Administration may address both phases simultaneously, and seek comments and the resolution of disagreements on both phases at the end of its review. This allows flexibility for relatively simple cases to be resolved more quickly, while more complex cases benefit from a phased process.

19. At the end of its review, or at the end of each phase, a Review Panel or Lead Tax Administration will share the outcomes of its review and a recommendation that the Group's application of rules on Amount A be accepted or that changes be required. Where all Affected Parties agree with this recommendation, the review progresses to the second phase or ends with certainty for the Group, as relevant. Where one or more Affected Parties do not agree, or if the Review Panel itself did not reach agreement, specific issues where there is disagreement are referred to a Determination Panel for resolution.

A Determination Panel to resolve disagreements arising during the tax certainty process

20. It is fundamental to the Tax Certainty Framework that certainty is offered to all Groups that request it, without time-consuming and duplicative separate audits and MAP. This means that any disagreements that arise between tax administrations must be resolved within the framework. This is achieved by referring issues where there is disagreement to a Determination Panel which is required to reach a resolution by choosing from among the alternative outcomes put to it by the Lead Tax Administration, Scope Review Panel Members, Review Panel Members and Affected Parties. The composition of a Determination Panel is under consideration and could include independent experts, government officials or a combination of independent experts and government officials.

21. The fact a Determination Panel can only choose among options proposed to it ensures that, while the Determination Panel will settle a disagreement, the approach chosen must be one that was proposed by a tax administration. The Determination Panel shall endeavour to reach

agreement on each issue by consensus including all members but, where this is not possible, it shall choose the outcome that is supported by an overall majority.

Outcomes of the tax certainty process

22. Where a Group makes a request for certainty as to whether it is in-scope or over the calculation and allocation of profit before tax and the elimination of double taxation, and acts in a cooperative and transparent manner, it is guaranteed to be offered certainty. Parties to the Convention shall implement the outcomes of the certainty process and shall not undertake any compliance activity inconsistent with these outcomes. This certainty shall continue to apply so long as a Group does not withdraw its request or undertake steps outside of the multilateral process to reduce the profit before tax allocated to a Party, or increase the amount of relief to be provided for the elimination of double taxation, under the Convention.

A review in circumstances where a Group has not made a request for certainty

23. In general, it is expected that Groups will take advantage of the proposed framework for certainty over Amount A. However, as all elements of the certainty process remain voluntary on the part of Groups, there may be cases where a Group chooses not to request certainty for a particular Period.

24. In these cases, tax administrations could undertake separate enquiries under domestic law to determine whether the Group's application of the new rules is correct. However, this may involve significant duplication of work on the part of tax administrations, and could result in an inconsistent application of rules on Amount A and consequent double or multiple taxation.

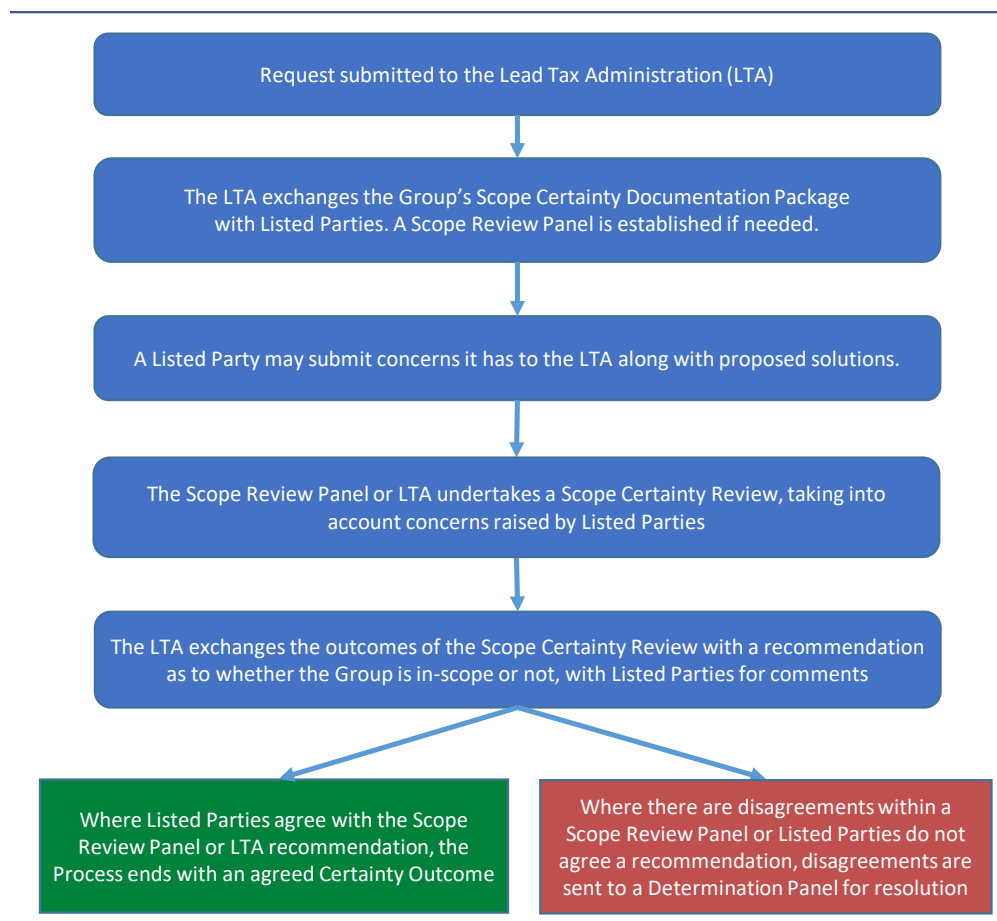
25. To reduce these risks, the Tax Certainty Framework contains an option for any number of tax administrations to cooperate and undertake a review of a Group's Amount A Common Documentation Package on a coordinated basis, though the process for this cooperation is deliberately left flexible and tax administrations may choose not to participate. Where this process is used, a Group is given a window of opportunity to make a late application for comprehensive certainty, which will allow the Group to benefit from a binding certainty outcome including all Parties to the convention rather than just those that agree to participate.

PART TWO – DETAILED DESCRIPTIONS OF EACH ELEMENT OF A POSSIBLE TAX CERTAINTY FRAMEWORK

I. CERTAINTY OVER WHETHER A GROUP IS A COVERED GROUP

1. A Scope Certainty Process to determine whether a Group is a Covered Group

A Scope Certainty Review



Submitting a request for a Scope Certainty Review

1. At any time after [the last day of a Period], the Coordinating Entity of a Group may submit a request, filed with the Lead Tax Administration, for multilateral certainty that it is not a Covered Group for the Period (Scope Certainty).
2. A request must be in the format and with the content specified in [to be agreed] and be accompanied by a complete Scope Certainty Documentation Package. The request shall include a list of Listed Parties from which Scope Certainty is sought, prepared by the Coordinating Entity. The request shall also include a Power of Attorney or other confirmation from the Authorised Representatives of the Ultimate Parent Entity and all Group Entities that they agree with the content of the Scope Certainty Documentation Package and to any changes agreed by the Coordinating Entity.

3. A request under paragraph 1 shall also include agreement by the Coordinating Entity,

(a) to the exchange of the following information by the Competent Authority of the Lead Tax Administration with Competent Authorities of Listed Parties:

- i) the request and Scope Certainty Documentation Package filed by the Coordinating Entity,
- ii) any other information or documentation provided by the Coordinating Entity or for the purposes of the Scope Certainty Review,
- iii) in the event the Coordinating Entity withdraws its request for Scope Certainty or is deemed to do so, notification that this has occurred, and
- iv) in the event that a Scope Certainty Review concludes with an agreed Scope Certainty Outcome, notification that this has occurred including the details of that Scope Certainty Outcome,

(b) to the exchange of the following information by the Competent Authority of the Lead Tax Administration with Competent Authorities of Parties that are not Listed Parties:

- i) the identification of the requesting Group and Coordinating Entity, the request, and notification the request has been accepted, and
- ii) in the event the Coordinating Entity withdraws its request for Scope Certainty or is deemed to do so, notification that this has occurred, and

(c) to exchanges of information between the Competent Authority of the Lead Tax Administration and the Competent Authority of a Listed Party for the purposes of the Scope Certainty Review.

4. If the request satisfies the conditions in paragraph 1, paragraph 2 and paragraph 3, the Lead Tax Administration shall accept the request on behalf of Listed Parties. The Competent Authority of the Lead Tax Administration shall, within [30 days] of receiving the request, exchange the request with the Competent Authorities of the Listed Parties. Where the request does not satisfy all of the conditions in these paragraphs, the Lead Tax Administration shall inform the Coordinating Entity of the reasons for this. Once the Coordinating Entity has addressed these issues, the Competent Authority of the Lead Tax Administration shall within [30 days] exchange the request with the Competent Authorities of the Listed Parties.

5. By the deadline for exchange in paragraph 4, the Competent Authority of the Lead Tax Administration shall also notify the Competent Authorities of all Parties that are not included as Listed Parties, that a request has been submitted. The Competent Authority of any Party may notify the Competent Authority of the Lead Tax Administration within [30 days] that it considers that it should be included on the list of Listed Parties and the reason for this, together with any documents or other evidence to support this reason. The Lead Tax Administration shall promptly inform the Coordinating Entity and request that the Party be added as a Listed Party. Within [30 days] the Coordinating Entity should provide an updated list of Listed Parties including the new Listed Party, or inform the Lead Tax Administration that it does not intend to do so, together with an explanation as to why this is the case. If, in light of the evidence and explanations provided by the Party and Coordinating Entity, the Lead Tax Administration considers that the Party has a

reasonable basis for being included as a Listed Party (e.g. because it has provided evidence of revenues that may be in-scope revenues above the Nexus threshold in its jurisdiction for the Period), the Lead Tax Administration shall inform the Coordinating Entity that the Party shall be included as a Listed Party notwithstanding the Coordinating Entity's disagreement.¹ The Competent Authority of the Lead Tax Administration shall inform the Competent Authority of the Party of the outcome of this process.

6. The tax administrations of all Listed Parties shall suspend all domestic compliance activities with respect to the application of Parts II to V and Section 1 of Part VI of the Convention² to the Group for the Period specified in the request, for the duration of the Scope Certainty Process. A tax administration may take the minimum procedural steps required to protect its ability to undertake compliance activity in the event a Group withdraws its request for Scope Certainty, such as opening an enquiry on a protective basis, but may not take substantive action such as requesting information from a taxpayer or issuing a tax assessment. Nothing in this paragraph requires a Listed Party to suspend compliance activity with respect to any matters not covered by the Convention or with respect to Related Issues.

A review by a Scope Review Panel or Lead Tax Administration

7. A panel of tax administrations of Listed Parties (the Scope Review Panel) shall be established to undertake a Scope Certainty Review where:

- (a) a request for Scope Certainty is accepted in accordance with the process in paragraph 4,
- (b) any of the criteria in paragraph 8 are met, and
- (c) any of the criteria in paragraph 9 are met.

Where a Scope Review Panel is not established because the criteria in paragraph 8 or paragraph 9 are not met, a Scope Certainty Review shall be undertaken by the Lead Tax Administration.

8. The criteria referred to in paragraph 7(b) are:³

- (a) the Group has Excluded Revenues for the Period, based on information contained in the Scope Certainty Documentation Package filed by the Coordinating Entity,
- (b) the Group's consolidated financial statements include
 - i) total reported revenues in excess of EUR 20 billion, and
 - ii) one or more Disclosed Segments, and
- (c) the Group is a Fragmented Group.

¹ As noted in the Background, commentators should note that this does not reflect the final or consensus views of the Inclusive Framework and that some members hold the view that a Party should be able to require that it is included as a Listed Party for the purposes of this Section.

² These references shall be updated once the Convention is agreed and will refer to all Parts of the Convention containing the substantive rules concerning the calculation and allocation of Amount A and the elimination of double taxation, as well as the administration of Amount A.

³ The list of criteria in paragraph 7(b) will be re-considered and may be amended as the overall design of rules is finalised.

9. The criteria referred to in paragraph 7(c) are:
- (a) it is the first time the Group has made a request for certainty, either under this Section or Section 2, for a Period in which a particular circumstance in paragraph 7(b) is met, or
 - (b) all previous reviews undertaken by a Scope Review Panel under this Section, or by a Review Panel under Section 3, for Periods of the Group in which a particular circumstance in paragraph 7(b) was met ended without an agreed Scope Certainty Outcome or Certainty Outcome, because either:
 - i) the Coordinating Entity was persistently late in providing information without explanation, or acted in an uncooperative or non-transparent manner, including by providing inaccurate or incomplete information, or
 - ii) the Coordinating Entity withdrew its request for certainty before a Scope Certainty Outcome or Certainty Outcome was agreed.⁴

Scope Review Panel composition

10. The Competent Authority of the Lead Tax Administration shall invite Competent Authorities of Listed Parties to submit within [30 days] an expression of interest for the tax administration of that Listed Party to participate on the Scope Review Panel. Members of the Scope Review Panel shall be selected from the tax administrations of Listed Parties that submit expressions of interest. A Listed Party should only express interest in participating on a Scope Review Panel if its tax administration is committed to taking an active role on the Scope Review Panel and applying sufficient resources to ensure this is possible.

11. For the purposes of undertaking a Scope Certainty Review under this Section, a Scope Review Panel shall comprise:

- (a) the Lead Tax Administration, and
- (b) [six] tax administrations other than the Lead Tax Administration selected at random from the Listed Parties that submitted an expression of interest.

Where the total number of Listed Parties that expressed interest in participating on the panel is lower than [six], the remaining places shall remain unfilled.⁵

12. Where paragraph 8(a) applies, paragraph 11 shall not apply but a Scope Review Panel shall comprise:

- (a) the Lead Tax Administration,
- (b) [three] tax administrations not in (a) from Listed Parties where, based on information provided by the Group,

⁴ As noted in the Background, commentators should note that this does not reflect the final or consensus views of the Inclusive Framework and that some members hold the view that further Scope Certainty Reviews should be undertaken by a Scope Review Panel after a specified number of years or upon a trigger event.

⁵ As noted in the Background, commentators should note that this does not reflect the final or consensus views of the Inclusive Framework and different views are held by members as to whether places on a Scope Review Panel or Review Panel should remain unfilled where the number of Listed Parties or Affected Parties that submit expressions of interest is lower than the number of places on the Panel and, if not, the methodology for filling these places.

- i) for a Group seeking to apply the exclusion for Extractives Activities, the Group has a license in effect to explore for or exploit Minerals, Mineraloids and Hydrocarbons, or
 - ii) for a Group seeking to apply the exclusion for Regulated Financial Services, the Group has employee headcount in Regulated Financial Institutions which amounts to at least [five percent] of total headcount in all the Group's Regulated Financial Institutions, and
- (c) [three] tax administrations from Listed Parties not in (a) or (b).

The tax administrations in (b) and (c) shall be selected at random from the Listed Parties that submitted an expression of interest. Where the number of Listed Parties from either of these categories that expressed interest in participating on the panel is lower than [three], the remaining places on the Scope Review Panel shall be filled by tax administrations from other Listed Parties that submitted an expression of interest, selected at random. Where the total number of Listed Parties that expressed interest in participating on the panel is lower than [six], the remaining places shall remain unfilled.⁶

Undertaking a Scope Certainty Review

13. The Scope Review Panel or Lead Tax Administration shall conduct a Scope Certainty Review on behalf of all Listed Parties, to determine whether the Scope Certainty Documentation Package contains a correct application of the Convention to the Group. This shall consider issues with respect to:

- (a) the definition of a Group,
- (b) the calculation of Total Revenues and application of the Global Revenue threshold,
- (c) the calculation of the Pre-Tax Profit Margin and application of the Profitability threshold,
- (d) where paragraph 8(a) applies, issues with respect to the application of rules on Excluded Revenues, including:
 - i) the identification of Excluded Activities or Excluded Entities,
 - ii) the methodology used for the preparation of financial statements for Bespoke Segments, or the application of the exception to the requirement to prepare these financial statements based on the use of Disclosed Segments,
 - iii) the determination of Revenues derived from Excluded Activities or Excluded Entities, the calculation of Total Revenues after adjustment for these Revenues and the application of the Global Revenue threshold, and
 - iv) the determination of Profits or Losses derived from Excluded Activities or Excluded Entities, the calculation of the Pre-Tax Profit Margin after adjustment for these Profits or Losses, and application of the Profitability threshold.
- (e) where paragraph 8(b) applies, issues with respect to the application of rules on Segmentation, including:

⁶ See Footnote 5.

- i) [to be agreed as rules are finalised]
- (f) Where paragraph 8(c) applies, issues with respect to the application of rules on Internal Fragmentations, including:
 - i) the ownership structure of the Group,
 - ii) whether an Internal Fragmentation has occurred,
 - iii) whether the Group's Total Revenues and those of other Fragmented Groups resulting from the same Internal Fragmentation meet the Global Revenue threshold, and
 - iv) the principle purposes of the Internal Fragmentation.

14. A Scope Review Panel or Lead Tax Administration should begin a Scope Certainty Review by the later of:

- (a) [30 days] after the Competent Authority of the Lead Tax Administration exchanged the request for Scope Certainty with the Competent Authorities of Listed Parties, as described in paragraph 4, and
- (b) [30 days] after the establishment of a Scope Review Panel.

This deadline may be extended by up to [180 days] where the Coordinating Entity indicated in its request for Scope Certainty that financial statements or other documents relied upon in the Scope Certainty Documentation Package are likely to be amended and this would impact the application of the Convention for the Period. The Competent Authority of the Lead Tax Administration shall inform the Competent Authorities of all Listed Parties of the planned start date for this review, before the review is due to commence.

15. The Scope Review Panel or Lead Tax Administration may test factual information contained in the Scope Certainty Documentation Package, or provided by the Coordinating Entity, to verify its accuracy. Where a need for additional relevant information or clarification is identified for the purposes of this Scope Certainty Review, it shall be required from the Coordinating Entity by the Lead Tax Administration. In general, the Coordinating Entity should be required to provide this information or clarification within [30 days], unless the Coordinating Entity provides a reasonable explanation as to why more time is needed.

16. At any point before the Scope Certainty Review is completed, the Competent Authority of any Listed Party may submit to the Competent Authority of the Lead Tax Administration details of any concerns it has with respect to the application of the Convention to the Group contained in the Scope Certainty Documentation Package and propose resolutions to address these concerns. The Competent Authority of the Lead Tax Administration shall exchange these concerns and proposed resolutions with the Competent Authorities of all Listed Parties. The Scope Review Panel or Lead Tax Administration shall take these concerns and proposed resolutions into account in conducting its Scope Certainty Review and shall endeavour to resolve them as appropriate. To facilitate this process, Competent Authorities of Listed Parties should aim to provide details of these concerns as early as possible, even before the Scope Certainty Review is commenced. Early submission of such information, when possible, will be to the advantage of the Scope Certainty Review Process and all Listed Parties.

17. In conducting a Scope Certainty Review, the Scope Review Panel or Lead Tax Administration shall wherever appropriate take into account any Scope Certainty Outcomes or Comprehensive Certainty Outcomes agreed with respect to the Group for

earlier Periods when the Group was found to be out of scope or within scope of the Convention. To facilitate this, the Lead Tax Administration should, to the extent possible, make available to the Scope Review Panel any information pertaining to a review for an earlier Period of the Group that is relevant to the current review. The Scope Review Panel or Lead Tax Administration should not propose an amendment to a Scope Certainty Documentation Package that is inconsistent with an earlier agreed Scope Certainty Outcome or Comprehensive Certainty Review for the same Group unless such an amendment is necessary for a correct application of the Convention,⁷ in which case an explanation of the reason for this shall be included in the summary of outcomes of the Scope Certainty Review.

18. If, in the view of the Scope Review Panel or Lead Tax Administration, the Coordinating Entity is persistently late in providing information without explanation, or is acting in an uncooperative or non-transparent manner, including by providing inaccurate or incomplete information, this issue shall be raised with the Coordinating Entity. Where this issue is not resolved, a majority of Scope Review Panel members, or the Lead Tax Administration where no Scope Review Panel was established, may conclude that a Scope Certainty Outcome cannot be provided. The Coordinating Entity shall be informed of this outcome by the Lead Tax Administration and the Scope Certainty Review Process shall come to an end without an agreed Scope Certainty Outcome. The Coordinating Entity or any other Group Entity shall not be permitted to submit a further request for certainty under this Section with respect to the same Period. The Competent Authorities of Listed Parties shall be informed of this outcome by the Competent Authority of the Lead Tax Administration. The next time the Coordinating Entity submits a request for Scope Certainty it should provide written confirmation that the issues which resulted in the late provision of information or in it acting in an uncooperative or non-transparent manner have been addressed and will not recur.

19. A Scope Review Panel or Lead Tax Administration may develop further processes for the purposes of undertaking a Scope Certainty Review, so long as these are not inconsistent with any provisions of this Section.

Agreeing the outcomes of a Scope Certainty Review

20. The Scope Review Panel or Lead Tax Administration shall endeavour to complete its Scope Certainty Review within [90 days] of the review commencing. Within [30 days] of this review ending, the Competent Authority of the Lead Tax Administration shall exchange with the Competent Authorities of all Listed Parties a summary of the outcomes of the Scope Certainty Review, using the standard format contained in [to be agreed]. The summary of outcomes shall be accompanied by:

- (a) a recommendation that Listed Parties agree a Scope Certainty Outcome reflecting the application of the Convention in the Scope Certainty Documentation Package as filed by the Coordinating Entity, that the Group is not a Covered Group for the Period,
- (b) a recommendation that Listed Parties agree a Scope Certainty Outcome reflecting specified changes to the approach in the Scope Certainty

⁷ As noted in the Background, commentators should note that this does not reflect the final or consensus views of the Inclusive Framework and that some members, while supporting a general principle of consistency, hold the view that Parties should not be restricted in their ability to recommend an approach that is inconsistent with an earlier Certainty Outcome.

Documentation Package as filed by the Coordinating Entity, such that the Group is not a Covered Group for the Period,

- (c) a recommendation that Listed Parties agree a Scope Certainty Outcome reflecting specified changes to the approach in the Scope Certainty Documentation Package as filed by the Coordinating Entity, such that the Group is a Covered Group for the Period, or
- (d) a statement that the Scope Review Panel has been unable to reach agreement including all members on one or more matters with respect to the application of the Convention reflected in the Scope Certainty Documentation Package, identifying the aspects where:
 - i) the Scope Review Panel agrees that the application of the Convention reflected in the Scope Certainty Documentation Package is correct,
 - ii) the Scope Review Panel agrees specific changes that should be made to the Scope Certainty Documentation Package, and
 - iii) the Scope Review Panel has been unable to reach agreement, together with
 - i. a description of the specific item or items in the Scope Certainty Documentation Package with respect to which the Scope Review Panel has been unable to reach agreement,
 - ii. a compilation of the different positions of the members of the Scope Review Panel, and
 - iii. the change to a numeric item or other outcome proposed by any member or members of the Scope Review Panel to address this issue or each of these issues.

The summary of outcomes shall be accompanied by any information not contained in the Group's Scope Certainty Documentation Package, provided by the Coordinating Entity which was relevant to the Scope Review Panel or Lead Tax Administration's recommendation or statement above.

21. Within [60 days] of the exchange in paragraph 20, the Competent Authority of a Listed Party may submit to the Competent Authority of the Lead Tax Administration written comments:

- (a) agreeing with the recommendation of the Scope Review Panel or Lead Tax Administration,
- (b) disagreeing with the recommendation, together with
 - i) a description of the specific item or items in the Group's Scope Certainty Documentation Package, as filed or reflecting changes recommended by the Scope Review Panel or Lead Tax Administration, that the Competent Authority disagrees with,
 - ii) a paper explaining the Competent Authority's position as to why this item or each of these items reflects an incorrect application of the Convention, and
 - iii) the change to a numeric item or other outcome proposed by the Competent Authority to address the issue or each of the issues raised by the Competent Authority, or

- (c) in cases where the Scope Review Panel has been unable to reach agreement including all members with respect to the application of the Convention reflected in the Scope Certainty Documentation Package,
- i) agreeing with the position of the Scope Review Panel with respect to aspects where the panel did reach agreement,
 - ii) disagreeing with the position of the Scope Review Panel with respect to aspects where the panel did reach agreement, together with
 - i. a description of the specific item or items in the Group's Scope Certainty Documentation Package, as filed or reflecting changes recommended by the Scope Review Panel, that the Competent Authority disagrees with,
 - ii. a paper explaining the Competent Authority's position as to why this item or each of these items reflects an incorrect application of the Convention, and
 - iii. the change to a numeric item or other outcome proposed by the Competent Authority to address this issue or each of these issues, and
 - iii) commenting on the positions of members of the Scope Review Panel with respect to aspects where the panel did not reach agreement, which may include a proposal for an alternative approach to resolve the disagreement, accompanied by an explanation of the Competent Authority's position as to why this approach reflects the correct application of the Convention.

22. A Competent Authority of a Listed Party shall not submit written comments that are inconsistent with an earlier agreed Scope Certainty Outcome or Certainty Outcome for the same Group for a Period in which it was a Listed Party or an Affected Party, unless in the view of the Competent Authority such comments are necessary for a correct application of the Convention, in which case an explanation of the reason for this must be provided.⁸

23. Where the Competent Authority of a Listed Party does not submit any comments in accordance with paragraph 21, this shall be taken for the purposes of this Section as agreement with the recommendation of the Scope Review Panel or Lead Tax Administration.

24. Where the Competent Authority of a Listed Party has submitted written comments that disagree with the recommendation of the Scope Review Panel or Lead Tax Administration, or which propose an alternative approach to resolve disagreement between Scope Review Panel members, the Panel or Lead Tax Administration may:

- (a) determine whether to adopt the Listed Party's proposal, and if so the Competent Authority of the Lead Tax Administration will exchange with those Competent Authorities of all Listed Parties a revised recommendation in accordance with paragraph 20 and other Listed Parties may submit written comments in accordance with paragraph 21, and

⁸ See Footnote 7.

- (b) consult with the Competent Authority of that Listed Party to explore whether, in light of other information it can provide, the Listed Party is still of the opinion that changes are needed or wishes to withdraw its disagreement with the recommendation.

The consultation under (b) may extend up to [30 days] following the deadline for comments mentioned in paragraph 21.

Concluding a Scope Certainty Review Process

25. If a Scope Review Panel reached agreement including all members and no Competent Authorities submitted written comments that disagreed with the recommendation of the Scope Review Panel or Lead Tax Administration by the deadline for comments, or if all such written comments are withdrawn following consultation, the Scope Certainty Process concludes with an agreed Scope Certainty Outcome in accordance with the recommendation of the Scope Review Panel or Lead Tax Administration. The Lead Tax Administration shall inform the Coordinating Entity of the agreed Scope Certainty Outcome within [30 days] of the conclusion of the Scope Certainty Review Process.

26. If this Scope Certainty Outcome includes a decision that the Group is a Covered Group for the Period, the Coordinating Entity shall be required to prepare a Common Documentation Package on the basis that the Group is a Covered Group and file this with the Lead Tax Administration by the later of:

- (a) the applicable filing deadline, or
- (b) [90 days] after the date the Coordinating Entity is informed of the Scope Certainty Outcome.

27. If the Scope Review Panel did not reach agreement including all members, or if the Competent Authority of one or more Listed Parties submitted written comments disagreeing with the recommendation of the Scope Review Panel or Lead Tax Administration that were not subsequently withdrawn, issues where there is disagreement shall be submitted to a Determination Panel for a final outcome, under Section 5.

A Follow-Up Scope Certainty Review

Submitting a request for a Follow-Up Scope Certainty Review

28. Where a Group is not a Covered Group, there may be a significant cost in collecting and presenting information to demonstrate that this is the case on an ongoing basis. Once a Group has requested and received an agreed Scope Certainty Outcome that it is not a Covered Group, there are therefore benefits in a simplified Follow-Up Scope Certainty Review Process to provide some Groups with certainty that they continue not to be a Covered Group without the need to file a full Scope Certainty Documentation Package, if this is not needed. As such, the Coordinating Entity of a Group may submit a request, filed with the Lead Tax Administration, for a Follow-Up Scope Certainty Review for a Period where:

- (a) any of the criteria in paragraph 8 are met,
- (b) none of the criteria in paragraph 9 are met,
- (c) the Group has previously been subject to a Scope Certainty Review under this Section which concluded with an agreed Scope Certainty Outcome that the Group is not a Covered Group,

(d) since the Scope Certainty Review mentioned in sub-paragraph (c) the Group has not filed a Common Documentation Package for a Period, nor been found to be a Covered Group under a Scope Certainty Review process requested under this Section, and

(e) in the view of the Group, there have been no changes to the Group's

- i) structure,
- ii) activities,
- iii) financial results with respect to activities giving rise to in-scope revenues, or
- iv) other circumstances relevant to the criteria in paragraph 8,

sufficient to mean it may be a Covered Group for the Period for which certainty is requested.

29. The request shall include a list of Listed Parties from which Scope Certainty is sought, prepared by the Coordinating Entity. The process for a Party to be added to this List described in paragraph 5 shall apply.

30. A request must be in the format and with the content specified in [to be agreed] and be accompanied by a complete Follow-Up Scope Certainty Documentation Package. The request shall include agreement by the Coordinating Entity,

(a) to the exchange of the following information by the Competent Authority of the Lead Tax Administration with Competent Authorities of Listed Parties:

- i) the request and Follow-Up Scope Certainty Documentation Package filed by the Coordinating Entity,
- ii) any other information or documentation provided by the Coordinating Entity or for the purposes of the Follow-Up Scope Certainty Review,
- iii) in the event the Coordinating Entity withdraws its request for Follow-Up Scope Certainty or is deemed to do so, notification that this has occurred, and
- iv) in the event that a Follow-Up Scope Certainty Review concludes with an agreed Scope Certainty Outcome, notification that this has occurred including the details of that Scope Certainty Outcome,

(b) to the exchange of the following information by the Competent Authority of the Lead Tax Administration with Competent Authorities of Parties that are not Listed Parties:

- i) the identification of the requesting Group and Coordinating Entity, the request, and notification the request has been accepted, and
- ii) in the event the Coordinating Entity withdraws its request for Follow-Up Scope Certainty or is deemed to do so, notification that this has occurred, and

(c) to exchanges of information between the Competent Authority of the Lead Tax Administration and the Competent Authority of a Listed Party for the purposes of the Follow-Up Scope Certainty Review.

Otherwise, the conditions and consequences of a request described in paragraphs 1 to 6 shall apply to a request under paragraph 28.

Undertaking a Follow-Up Scope Certainty Review

31. The Lead Tax Administration shall conduct a Follow-Up Scope Certainty Review on behalf of all Listed Parties to determine whether, based on information in the Follow-Up Scope Certainty Documentation Package the Group continues not to be a Covered Group and a Scope Certainty Outcome should be agreed on this basis.

32. Issues considered as part of a Follow-Up Scope Certainty Review include:

- (a) changes to the Group's structure,
- (b) the extent to which information in the Follow-Up Scope Certainty Documentation Package allows a reasonable approximation of the results of entities and activities
 - i) giving rise to Excluded Revenues and other Revenues, or
 - ii) included in a Disclosed Segment,
- (c) changes to the Group's financial reporting and management reporting policies including, but not limited to, the treatment of centralised costs,
- (d) likely changes to the Group's or Segment's Revenues not including Excluded Revenues, and the potential impact of this on the application of the Global Revenue threshold,
- (e) likely changes to the profits attributable to the Group's or Segment's Revenues not including Excluded Revenues, and the potential impact of this on the application of the Profitability threshold, and
- (f) any other changes in the Group's circumstances relevant to the criteria in paragraph 8.

33. A Lead Tax Administration should begin a Follow-Up Scope Certainty Review within [30 days] after the Competent Authority of the Lead Tax Administration exchanged the request for Follow-Up Scope Certainty with the Competent Authorities of Listed Parties.

34. If, in the view of the Lead Tax Administration at any point during its review, it is likely that:

- (a) it will not recommend to Listed Parties that the Group is not a Covered Group, or
- (b) Listed Parties will not agree that the Group is not a Covered Group,

the Lead Tax Administration shall inform the Coordinating Entity.

35. Where paragraph 34 applies, the Coordinating Entity:

- (a) may take no action and allow the Follow-Up Scope Certainty Review to continue, or
- (b) may withdraw its request for a Follow-Up Scope Certainty review and,
 - i) prepare a complete Scope Certainty Review Documentation Package and file this with the Lead Tax Administration together with a request for Scope Certainty, or

- ii) prepare a Common Documentation Package on the basis that the Group is a Covered Group and file this with the Lead Tax Administration.

Where the Coordinating Entity plans to take the action in (b) it should inform the Lead Tax Administration as early as possible. Where this is the case, the Follow-Up Scope Certainty Review shall end with no agreed Scope Certainty Outcome and the Competent Authority of the Lead Tax Administration shall inform the Competent Authorities of all Parties. If the Coordinating Entity subsequently submits a request for Scope Certainty for the same Period, that Scope Certainty Review may in some cases be completed more quickly in light of work that has already been undertaken as part of the Follow-Up Scope Certainty Review process.

36. Paragraphs 15 to 19 of the process for undertaking a Scope Certainty Review also apply to a Follow-Up Scope Certainty Review, with necessary modifications.

Agreeing the outcomes of a Follow-Up Scope Certainty Review

37. The Lead Tax Administration shall endeavour to complete a Follow-Up Scope Certainty Review within [90 days] of the review commencing. Within [30 days] of this review ending, the Competent Authority of the Lead Tax Administration shall exchange with the Competent Authorities of all Listed Parties a summary of the outcomes of the Follow-Up Scope Certainty Review, using the standard format contained in [to be agreed]. The summary of outcomes shall be accompanied by:

- (a) a recommendation that Listed Parties agree with the conclusion in the Group's Follow-Up Scope Certainty Documentation Panel that the Group continues not to be a Covered Group and that no further action shall be taken, or
- (b) a recommendation that the conclusion in the Group's Follow-Up Scope Certainty Documentation Package cannot be agreed on the basis of the information available.

The summary of outcomes shall be accompanied by any information not contained in the Group's Follow-Up Scope Certainty Documentation Package, provided by the Coordinating Entity which was relevant to the Lead Tax Administration's recommendation above.

38. Paragraphs 21 to 24 on the process for agreeing the outcomes of a Scope Certainty Review also apply to a Follow-Up Certainty Review, with necessary modifications.

Concluding a Follow-Up Scope Certainty Review Process

39. If no Competent Authorities of Listed Parties submitted written comments that disagreed with the recommendation of the Lead Tax Administration by the deadline for comments, or if all such written comments are withdrawn following consultation, the Follow-Up Scope Certainty Process concludes with an agreed Scope Certainty Outcome in accordance with the recommendation of the Lead Tax Administration. The Lead Tax Administration shall inform the Coordinating Entity of the agreed Scope Certainty Outcome within [30 days] of the conclusion of the Follow-Up Scope Certainty Process.

40. Where paragraph 39 applies, if the Lead Tax Administration recommended that the conclusion in the Group's Follow-Up Scope Certainty Documentation Package cannot be agreed on the basis of the information available, the Coordinating Entity:

- (a) may prepare a complete Scope Certainty Review Documentation Package and file this with the Lead Tax Administration within [90 days] together with a request for Scope Certainty, or
- (b) may prepare a Common Documentation Package on the basis that the Group is a Covered Group and file this with the Lead Tax Administration by the later of:
 - i) the applicable filing deadline, or
 - ii) [90 days] after the date the Coordinating Entity is informed of the Scope Certainty Outcome.

If the Coordinating Entity subsequently submits a request for Scope Certainty for the same Period, this Scope Certainty Review may in some cases be completed more quickly in light of work that has already been undertaken as part of the Follow-Up Scope Certainty Review process.

41. If the Competent Authority of one or more Listed Parties submitted written comments disagreeing with the recommendation of the Lead Tax Administration that were not subsequently withdrawn, issues where there is disagreement shall be submitted to a Determination Panel for a final outcome, under Section 5.

II. CERTAINTY OVER A COVERED GROUP'S APPLICATION OF THE CONVENTION

2. Requests for Certainty by a Covered Group

Submitting a request for a Comprehensive Certainty Review

1. A Coordinating Entity of a Covered Group may submit a request to the Parties, filed with the Lead Tax Administration, for multilateral certainty with respect to the application of the Convention to its Group for a Period specified in the request (Comprehensive Certainty). The request shall be in a format set out in [to be agreed] and shall include agreement by the Coordinating Entity,

(a) to the exchange of the following information by the Competent Authority of the Lead Tax Administration with Competent Authorities of Affected Parties:

- i) the request and Common Documentation Package filed by the Coordinating Entity,
- ii) any other information or documentation provided by the Coordinating Entity or other Group Entity for the purposes of the Comprehensive Certainty Review,
- iii) in the event the Coordinating Entity withdraws its request for Comprehensive Certainty or is deemed to do so, notification that this has occurred,
- iv) in the event that a Comprehensive Certainty Process concludes with an agreed Comprehensive Certainty Outcome, notification that this has occurred including the details of that Comprehensive Certainty Outcome, and
- v) in the event the agreed Comprehensive Certainty Outcome ceases to apply, notification that this has occurred,

(b) to the exchange of the following information by the Competent Authority of the Lead Tax Administration with Competent Authorities of Parties that are not Affected Parties:

- i) the identification of the requesting Covered Group and Coordinating Entity, the request, and notification the request has been accepted,
- ii) in the event the Coordinating Entity withdraws its request for Comprehensive Certainty or is deemed to do so, notification that this has occurred,
- iii) in the event that a Comprehensive Certainty Process concludes with an agreed Comprehensive Certainty Outcome, notification that this has occurred, but not the details of that Comprehensive Certainty Outcome, and
- iv) in the event the agreed Comprehensive Certainty Outcome ceases to apply, notification that this has occurred, and

(c) to exchanges of information between the Competent Authority of the Lead Tax Administration and the Competent Authority of an Affected Party for the purposes of the Comprehensive Certainty Review.

2. A request for Comprehensive Certainty shall be filed along with the Group's Common Documentation Package for the Period, including a Power of Attorney or other confirmation from the Authorised Representatives of the Ultimate Parent Entity and all Group Entities that they agree with the content of the Common Documentation Package and to any changes agreed by the Coordinating Entity. The Common Documentation Package shall include further content set out in [to be agreed].

3. A request for Comprehensive Certainty that meets the conditions in paragraph 1 and paragraph 2 shall be accepted by the Lead Tax Administration on behalf of all Parties, and the Lead Tax Administration shall notify the Coordinating Entity of this acceptance. Where the Coordinating Entity has not provided some of the content agreed by the Parties, the Lead Tax Administration shall promptly inform the Coordinating Entity and require the missing content be provided within [60 days]. Where the missing content is not received by this deadline the Coordinating Entity shall be deemed to have withdrawn its request for Comprehensive Certainty. This deadline may be extended by a further [90 days] with the agreement of the Lead Tax Administration.

4. The tax administrations of all Parties shall suspend all domestic compliance activities with respect to the application of Parts II to V and Section 1 of Part VI of the Convention⁹ to the Group for the Period specified in a request under Paragraph 1, for the duration of the Comprehensive Certainty Process. A tax administration may take the minimum procedural steps required to protect its ability to undertake compliance activity in the event a Group withdraws its request for certainty, such as opening an enquiry on a protective basis, but may not take substantive action such as requesting information from a taxpayer or issuing a tax assessment. Nothing in this paragraph requires a Party to suspend compliance activity with respect to matters not covered by the Convention or with respect to Related Issues.

5. The request and Common Documentation Package filed by the Coordinating Entity shall be exchanged by the Competent Authority of the Lead Tax Administration with the Competent Authorities of Affected Parties by the later of [standard exchange deadline to be agreed] or [90 days] after the Common Documentation Package is filed with the Lead Tax Administration.

6. Where a request for Comprehensive Certainty is accepted before the Common Documentation Package is exchanged, the Competent Authority of the Lead Tax Administration shall include with that exchange:

- (a) notification that the request is accepted and a review shall be undertaken, and
- (b) one of the following:
 - i) if any of the circumstances described in sub-paragraphs (a) to (d)(i) of paragraph 1 of Section 3 applies, notification that the review shall be undertaken by a Review Panel,
 - ii) if there is a period of at least [five] years between the first day of the last Period for which a review was undertaken by a Review Panel and the first day of the Period for which Comprehensive Certainty is requested, notification that a proposal by an Affected

⁹ These references shall be updated once the Convention is agreed and will refer to all Parts of the Convention containing the substantive rules concerning the calculation and allocation of Amount A and the elimination of double taxation, as well as the administration of Amount A.

Party that the review be undertaken by a Review Panel should be submitted to the Lead Tax Administration within [30 days], or

- iii) notification that the review shall be undertaken by the Lead Tax Administration.

7. Where a request for Comprehensive Certainty has not been accepted by the deadline for the exchange of the Common Documentation Package in paragraph 6, the Competent Authority of the Lead Tax Administration shall include with that exchange an explanation that the request has not yet been accepted and a description of the content that was missing from the application. Within [30 days] after the deadline in paragraph 3, the Competent Authority of the Lead Tax Administration shall:

- (a) if the Coordinating Entity provides the missing content to the Lead Tax Administration by the deadline in paragraph 3, exchange this content with the Competent Authorities of Affected Parties, together with the information mentioned paragraph 6, or
- (b) notify the Competent Authorities of Affected Parties that the Coordinating Entity is deemed to withdraw its request for Comprehensive Certainty.

8. Where the Competent Authority of the Lead Tax Administration informs the Competent Authorities of Affected Parties as described in paragraph 6 or paragraph 7(a) that a request for Comprehensive Certainty has been accepted, the Competent Authority of the Lead Tax Administration shall exchange the request with the Competent Authorities of Parties that are not Affected Parties and notify them that the request has been accepted and that the provisions of paragraph 4 concerning the suspension of domestic compliance activities with respect to the application of the Convention apply. This ensures that a Group that has requested Comprehensive Certainty under this Section is not subject to any domestic compliance activity with respect to its application of the Convention for the Period covered by the request.

Submitting a request for an Advance Certainty Review

9. When a Coordinating Entity submits a Group's Common Documentation Package for a Period, this may be accompanied by a request for multilateral certainty with respect to one or more of its approaches listed in paragraph 10, to commence from a future Period specified in the request (Advance Certainty). The request shall be in a format set out in [to be agreed] and shall include agreement by the Coordinating Entity,

- (a) to the exchange of the following information by the Competent Authority of the Lead Tax Administration with Competent Authorities of Affected Parties:
 - i) the request and Advance Certainty Documentation Package filed by the Coordinating Entity,
 - ii) any other information or documentation provided by the Coordinating Entity or other Group Entity for the purposes of the Advance Certainty Review,
 - iii) in the event the Coordinating Entity withdraws its request for Advance Certainty or is deemed to do so, notification that this has occurred,
 - iv) in the event that an Advance Certainty Process concludes with an agreed Advance Certainty Outcome, notification that this has

occurred including the details of that Advance Certainty Outcome, and

- v) in the event the agreed Advance Certainty Outcome ceases to apply, notification that this has occurred, and

- (b) to exchanges of information between the Competent Authority of the Lead Tax Administration and the Competent Authority of an Affected Party for the purposes of the Advance Certainty Review.

10. A request for Advance Certainty under paragraph 9 may be with respect to one or more of the following approaches of the Group:¹⁰

- (a) the Group's Revenue Sourcing approach, comprising:

- i) its categorisation of revenues for the purposes of applying rules on revenue sourcing, and
- ii) its choice of reliable method for sourcing revenue from each category to jurisdictions, or

- (b) the Group's Segment Reporting Approach,¹¹ comprising

- i) the Group's identification of Disclosed Segments, and
- ii) the Group's policies for attributing revenues, expenses and other financial reporting items to each Segment for the purposes of [Parts II to V of the Convention], including the allocation of central costs.

A request for Advance Certainty shall also include the Group's internal control framework to ensure the correct application of the approaches in (a) and (b) and the reliability of information reported. A request shall be accompanied by an Advance Certainty Documentation Package with content set out in [to be agreed]. Parties may agree to add further approaches to those in this paragraph, to enable Advance Certainty to be requested across more aspects of the Convention and related controls.

11. The Competent Authority of the Lead Tax Administration shall exchange the request under Paragraph 9 and Advance Certainty Documentation Package with the Competent Authorities of Affected Parties by the later of [standard deadline for the exchange of the Common Documentation Package to be agreed] or [90 days] after the Advance Certainty Documentation Package is filed with the Lead Tax Administration.

¹⁰ The specific aspects of rules on Amount A to which Advance Certainty may apply shall be reviewed as these rules are finalised.

¹¹ As noted in the Background, commentators should note that this does not reflect the final or consensus views of the Inclusive Framework and that some members hold the view that the need for a process to provide Advance Certainty over a Group's Segment Reporting Approach is not clear.

3. Certainty Reviews by a Review Panel on behalf of the Parties

General provisions

Conditions for a review by a Review Panel

1. A panel of tax administrations of Affected Parties (the Review Panel) shall be established to undertake a Comprehensive Certainty Review, where a request for Comprehensive Certainty is accepted in accordance with the process in Section 2, and

- (a) this is the first time the Group has made a request for Comprehensive Certainty that has been accepted,
- (b) all previous reviews undertaken by a Review Panel for earlier Periods of the Group ended without an agreed Comprehensive Certainty Outcome, because either:
 - i) the Coordinating Entity was persistently late in providing information without explanation or acted in an un-cooperative or non-transparent manner, including by providing inaccurate or incomplete information, or
 - ii) the Coordinating Entity withdrew its request for tax certainty before a Comprehensive Certainty Outcome was agreed,
- (c) in cases where (b) does not apply, the review by a Review Panel or Lead Tax Administration for the most recent Period for which the Group submitted a request for Comprehensive Certainty concluded without an agreed Comprehensive Certainty Outcome as the Coordinating Entity was persistently late in providing information without explanation or acted in an un-cooperative or non-transparent manner, including by providing inaccurate or incomplete information, or
- (d) the first day of the Period to which the request for Comprehensive Certainty relates is at least [five] years¹² after the first day of the most recent Period for which a review was undertaken by a Review Panel,¹³ and
 - i) the Competent Authority of the Lead Tax Administration notified the Competent Authorities as described in paragraph 6 or paragraph 7 of Section 2 that a review by a Review Panel is proposed by the Lead Tax Administration, or
 - ii) within [30 days] of the exchange mentioned in paragraph 6 or paragraph 7 of Section 2, the Competent Authority of an Affected Party submits to the Competent Authority of the Lead Tax

¹² As noted in the Background, commentators should note that this does not reflect the final or consensus views of the Inclusive Framework and that some members hold the view that a Comprehensive Certainty Review should be undertaken by a Review Panel of Affected Parties more frequently or upon trigger events.

¹³ During a transitional period, a process will be coordinated to randomly allocate approximately the same number of Covered Groups to four batches, based on anonymised data on the Covered Groups filing a Common Documentation Package for the first Period that rules apply. In order to avoid a concentration of Review Panels in a single year, Affected Parties will be able to propose a second review by a Review Panel if a Group submits a request for Comprehensive Certainty either two years, three years, four years or five years after the first Review Panel review, depending upon which batch the Group belongs to. Thereafter the [five] year period specified in paragraph 1(d) shall apply.

Administration a proposal that a review by a Review Panel be undertaken.

2. Where the Competent Authority of an Affected Party submits comments under the process in paragraph 1(d)(ii) proposing a review by a Review Panel, the Competent Authority of the Lead Tax Administration shall, within [30 days] after the deadline for comments in paragraph 1, notify the Competent Authorities of all Affected Parties that such a review shall be undertaken.

3. A Review Panel shall also be established to undertake an Advance Certainty Review, where a request for Advance Certainty is accepted under Section 2. Where a Coordinating Entity files a Common Documentation Package for a Period and submits both a request for Comprehensive Certainty for that Period and a request for Advance Certainty for a future Period, the same Review Panel shall undertake both reviews.

Review panel composition

4. Where a Review Panel is to be established under this Section, the Competent Authority of the Lead Tax Administration shall invite Competent Authorities of Affected Parties to submit within [30 days] an expression of interest for the tax administration of that Affected Party to participate on the Review Panel. An Affected Party should only express interest in participating on a Review Panel if its tax administration is committed to taking an active role on the Review Panel and applying sufficient resources to ensure this is possible.

5. For the purposes of undertaking a review or reviews under this Section, a Review Panel shall comprise:

- (a) the Lead Tax Administration,
- (b) the tax administrations of [three] Affected Parties not in (a) that, based on information in the Common Documentation Package, are required to provide relief for the elimination of double taxation, and
- (c) the tax administrations of [three] Affected Parties not in (a) or (b).

6. The tax administrations in (b) and (c) shall be selected at random from the Affected Parties that submitted an expression of interest. Where the number of Affected Parties from either of these categories that expressed interest in participating on the panel is lower than [three], the remaining places on the Review Panel shall be filled by tax administrations from other Affected Parties that submitted an expression of interest, selected at random. Where the total number of Affected Parties that expressed interest in participating on the panel is lower than [six], the remaining places shall remain unfilled.¹⁴

Establishing an Expert Advisory Group of systems specialists

7. Whenever a Review Panel is established under this Section to undertake a Comprehensive Certainty Review or Advance Certainty Review, an Expert Advisory Group of systems specialists is established to undertake a review of a Group's relevant internal control framework and provide advice to the Review Panel as to whether this framework is reliable or if any improvements are needed in order it be considered reliable.

8. An Expert Advisory Group shall comprise:

¹⁴ See Footnote 5.

- (a) one systems specialist selected by the Lead Tax Administration from the Main Systems Specialist Pool, who will act as Chair of the Expert Advisory Group, and
- (b) [two] further systems specialists from different Affected Parties, selected from the Main Systems Specialist Pool at random.¹⁵

Establishing a pool of systems specialists for an Expert Advisory Group

A review of a Group's internal control framework will require an analysis of the Group's controls, its business and financial management systems and its enterprise resource planning software. As such, it is essential that a review is undertaken by tax officials with specific training and expertise in this area, which will provide advice to the Review Panel.

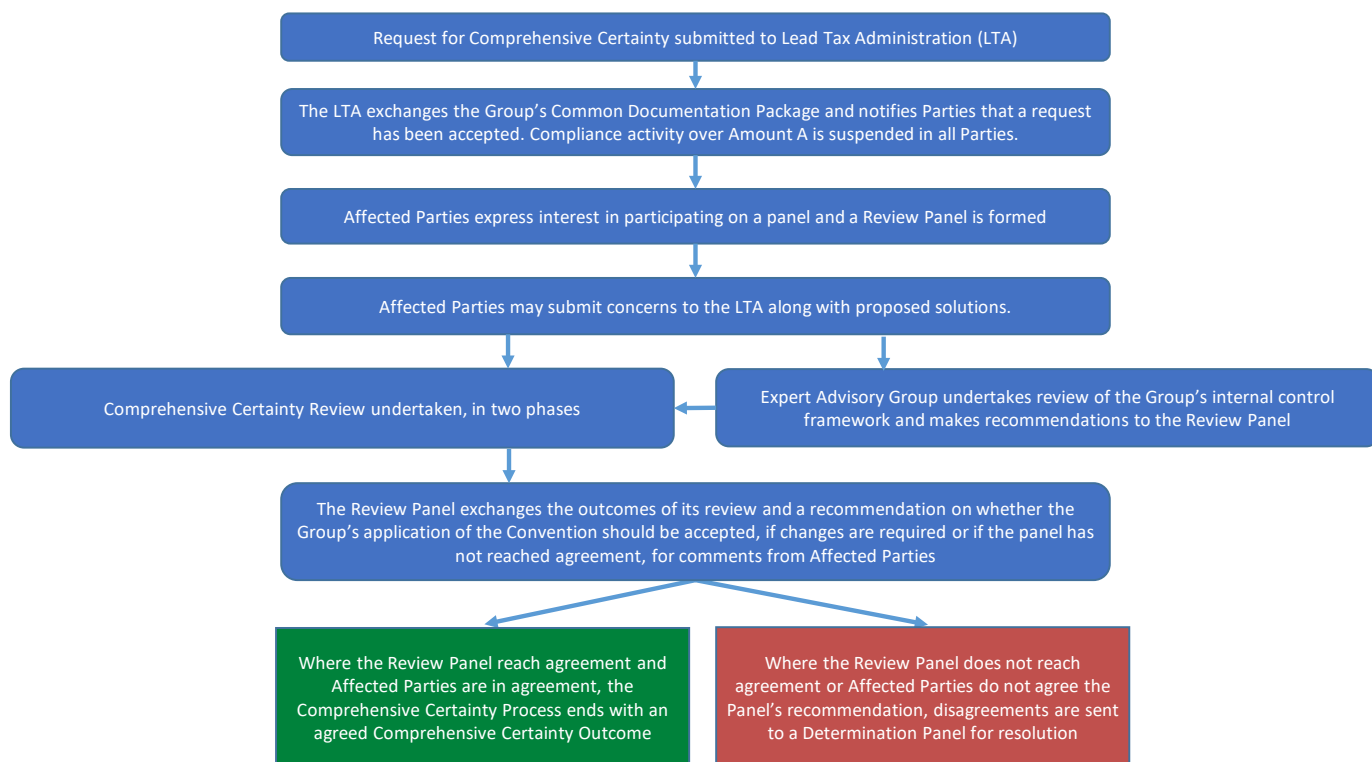
It is suggested that such a review should be undertaken by a Group of systems specialists drawn from a pool of tax officials with experience in undertaking systems reviews of Groups, nominated by Parties to the Convention. Criteria that nominated specialists are expected to meet shall be agreed by the Parties, but it is for each Party to determine whether its nominated specialists meet these criteria.

There is no limit to the number of nominations a Party may make, but a maximum of [three] specialists from a particular tax administration, shall be added to the Main Systems Specialist Pool. Other specialists from the same tax administration shall be added to the Substitute Systems Specialist Pool. Members of the Substitute Pool may participate on Advisory Groups where a selected member of the Main Pool is not available. This ensures that the likelihood of a specialist from a particular tax administration being selected at random is reasonably balanced, without limiting the total number of eligible specialists available. The tax administration of an eligible specialist must agree to give the official delegated competent authority status for the purposes of undertaking duties connected to a review, including the exchange of information under the Convention.

It is recognised that in the first years of applying rules for Amount A not all Parties may feel they have tax officials with the training and experience needed to meet the agreed criteria. Where a Party has no or a limited number of tax officials that it considers meet these criteria, it may put forward a number of officials as observers. Observers could benefit from specific training in conducting a review of a Group's internal control framework and also participate in one or more reviews as an observer to a review for which the tax official's tax jurisdiction is an Affected Party, to gain experience. Once the Party feels that the observer has gained sufficient experience, it could nominate the official to the Main Systems Specialist Pool or Substitute Systems Specialist Pool as appropriate. This should help to ensure that the number of eligible systems specialists in the pool, and participation by different tax administrations, will increase over time.

¹⁵ As noted in the Background, commentators should note that this does not reflect the final or consensus views of the Inclusive Framework with different views held by members with respect to the composition and number of experts in the Expert Advisory Group, as well as criteria for the nomination of systems specialists to the Main Systems Specialist Pool and the Substitute Systems Specialist Pool.

A Comprehensive Certainty Review by a Review Panel



Undertaking a Comprehensive Certainty Review

9. A Comprehensive Certainty Review shall commence on a date agreed by the Review Panel. The Competent Authority of the Lead Tax Administration shall inform the Competent Authorities of all Affected Parties not on the Review Panel of the agreed start date for its review before the review is due to commence. In general, a review should commence within [90 days] of the Competent Authority of the Lead Tax Administration notifying the Competent Authorities of Parties that a request for certainty was accepted, as described in paragraph 6 or paragraph 7 of Section 2, though this deadline may be extended by up to [180 days] with the agreement of the Review Panel where the Coordinating Entity included in its request for Comprehensive Certainty a statement that financial statements or other documents relied upon in the Common Documentation Package are likely to be amended and this would impact the application of the Convention for the Period. In any case, a review should not commence until any review that has already commenced under this Section or Section 4 for an earlier Period of the Group is completed.

10. Where a request for Comprehensive Certainty is accepted under Section 2 in circumstances where:

- a request for Comprehensive Certainty has been accepted with respect to one or more earlier Periods of the Group for which a review has not commenced, or
- a request for Comprehensive Certainty is accepted with respect to one or more later Periods of the Group before the review by the Review Panel has commenced,

all members of the Review Panel may agree by consensus that the Review Panel shall undertake the reviews for up to [three] additional Periods, from those most closely preceding or most closely following the Period for which the Review Panel was established, simultaneously with the review for that Period.

11. The Review Panel shall undertake a review on behalf of all Parties, coordinated by the Lead Tax Administration, to determine whether the Common Documentation Package filed by the Coordinating Entity reflects a correct application of all relevant aspects of the Convention to the Group in all Parties. Where a Scope Certainty Review or Follow-Up Scope Certainty Review for the same Period concluded with an agreed Scope Certainty Outcome, an Affected Party, including a member of the Review Panel, that was a Listed Party for that Scope Certainty Review, should not propose changes that are inconsistent with that Scope Certainty Outcome unless this is necessary for a correct application of the Convention, in which case this shall be explained.

12. A review by a Review Panel shall begin with a first phase considering issues with respect to whether a Group is a Covered Group, and those concerning elements of the Group's application of the Convention that form the basis upon which revenues will be sourced to Affected Parties and an allocation of Profit Before Tax and Elimination of Double Taxation will be made. These include:¹⁶

- (a) the definition of a Group
- (b) the application of the Global Revenue threshold and Profitability threshold,
- (c) the treatment of Disclosed Segments,
- (d) the determination and treatment of Excluded Revenues,
- (e) the calculation of Profit Before Tax,
- (f) the categorisation of transactions and choice of Reliable Method for the purposes of Revenue Sourcing, and
- (g) jurisdiction-level financial statements for the purposes of applying rules on [the Marketing and Distribution Profits Safe Harbour and the Elimination of Double Taxation].

13. In parallel with the first phase of a Review Panel review in paragraph 12, the Expert Advisory Group shall undertake a review of the Group's internal control framework to determine whether in the view of the Expert Advisory Group members it is robust and can be relied upon to ensure the accuracy of information reported. Where the Expert Advisory Group identifies aspects of this internal control framework that may not be robust or reliable it shall discuss its findings with the Review Panel to obtain evidence to determine whether the framework is in fact robust and can be relied upon.

14. The Lead Tax Administration and Chair of the Expert Advisory Group shall cooperate to ensure that the reviews in paragraph 12 and paragraph 13 are coordinated, so that progress on one review can be taken into account in ongoing work on the other review. At the end of the review of the Group's internal control framework, the Chair of the Expert Advisory Group shall provide a report to the Review Panel setting out the work the Expert Advisory Group has undertaken and, as a result of this work, whether in the view of the Expert Advisory Group the internal control framework is robust or reliable and whether it recommends changes or additional controls to be introduced for future Periods. The report will also highlight any differences in opinion between members of the Expert

¹⁶ The matters to be included in the first phase of a review shall be reconsidered as the structure and content of rules is agreed.

Advisory Group. The Competent Authority of the Lead Tax Administration shall share the Advisory Group's conclusions and any recommendations with the Competent Authorities of all Affected Parties. Where the Review Panel does not accept the recommendations of the Expert Advisory Group this will be explained by the Review Panel in the summary of outcomes of its review. Future Comprehensive Certainty Reviews will consider whether changes or additional controls recommended by the Expert Advisory Group and accepted by the Review Panel have been introduced.

15. The first phase of a review by a Review Panel described in paragraph 12 shall be followed by a second phase, considering all other elements of the Group's application of the Convention for the Period, including:

- (a) the identification of Parties in which the Group meets the applicable Nexus threshold,
- (b) the allocation of Profit Before Tax to Affected Parties,
- (c) the application of the Marketing and Distribution Safe Harbour,
- (d) the application of rules on the impact of withholding taxes, and
- (e) the Elimination of Double Taxation.

16. At the end of the first phase of a review under paragraph 12, members of the Review Panel shall agree among themselves whether to progress directly to the second phase under paragraph 15, or to seek comments from Affected Parties on the outcomes of the first phase and resolution of any disagreements before progressing to the second phase. Where the request for Comprehensive Certainty under Section 2 was accompanied by a request for Advance Certainty, the Review Panel should consider seeking comments from Affected Parties on the outcomes of the first phase as early as possible, to avoid any delay to the Advance Certainty Process.

17. Where a Review Panel agrees to progress directly to the second phase, it shall ensure that its review of the matters described in paragraph 15 includes the computations undertaken by the Group in its Common Documentation Package. This will ensure that, where numerical changes are subsequently required to the Group's Common Documentation Package as a result of disagreements over matters considered in the first phase of the review, the impact of these changes on matters considered in the second phase can be agreed quickly.

18. The Review Panel and Expert Advisory Group may test factual information contained in the Common Documentation Package or provided by the Coordinating Entity, to verify its accuracy. Unless otherwise agreed, all engagement with the Group throughout the Comprehensive Certainty Process shall be conducted by the Lead Tax Administration through the Coordinating Entity. Where a need for additional information or clarification is identified for the purposes of this review, it shall be required from the Coordinating Entity by the Lead Tax Administration. In general the Coordinating Entity should be required to provide this information or clarification within [30 days], unless the Coordinating Entity provides a reasonable explanation as to why more time is needed.

19. At any point before a review by the Review Panel and Expert Advisory Group is completed, the Competent Authority of any Affected Party not participating on the Review Panel may submit to the Competent Authority of the Lead Tax Administration details of any concerns it has with respect to the application of the Convention to the Group reflected in the Common Documentation Package and propose resolutions to address these concerns. The Competent Authority of the Lead Tax Administration shall make these concerns and proposed resolutions available to the Competent Authorities of all Affected

Parties. The Review Panel and Expert Advisory Group shall take these concerns and proposed resolutions into account in conducting the review and shall endeavour to resolve them as appropriate. To facilitate this process within the applicable timeframe, Competent Authorities of Affected Parties should aim to provide details of these concerns as early as possible, even before the Review Panel and Expert Advisory Group commence their reviews. Early submission of such information, when possible, will be to the advantage of the Comprehensive Certainty Review Process and all Affected Parties.

20. The Review Panel shall endeavour to reach agreement including all members as to whether each aspect of the Common Documentation Package Package reflects a correct application of the Convention or if amendments should be required. Where it becomes clear to the Review Panel that, despite its endeavours, the panel is unlikely to reach such agreement on a particular aspect of a Common Documentation Package Package, discussions on that aspect should cease without agreement having been reached. The Review Panel shall endeavour to reach agreement including all members on other aspects of the Common Documentation Package, even if the consequence of this lack of agreement on one particular aspect is that the Review Panel is unable to agree numerical elements.

21. In conducting a review, the Review Panel and Expert Advisory Group shall wherever appropriate take into account any Comprehensive Certainty Outcomes agreed with respect to the Group for earlier Periods. To facilitate this, the Lead Tax Administration should, to the extent possible, make available to the Review Panel and Expert Advisory Group any information pertaining to a review for an earlier Period of the Group that is relevant to the current review. The Review Panel should not propose a recommendation that is inconsistent with earlier agreed Comprehensive Certainty Outcomes for the same Group unless this is necessary for a correct application of the Convention, in which case an explanation of the reason for this shall be included in the summary of outcomes of the review.¹⁷

22. Where an Advance Certainty Outcome agreed following a previous review applies for the Period, the Expert Advisory Group may request samples of data, or examples of sample testing undertaken by the Group, to confirm that an agreed approach has been implemented by the Group and has been correctly applied. The Review Panel and Expert Advisory Group shall not otherwise consider issues covered by the Advance Certainty Outcome unless the Lead Tax Administration or any Affected Party has provided evidence that suggests a Relevant Change has occurred with respect to one or more of the Group's approaches covered by Advance Certainty, based on:

- (a) information contained in the Group's Common Documentation Package,
- (b) information provided by the Coordinating Entity, or
- (c) other information held by the Lead Tax Administration or Affected Party.

23. Where in the view of the Review Panel, taking into account recommendations of the Expert Advisory Group, a Relevant Change has occurred or an agreed approach has not been implemented or has not been correctly applied, the review by the Review Panel under paragraph 12 and paragraph 15 shall be undertaken on the basis that affected elements of the Advance Certainty Outcome do not apply. This does not mean that the approach applied in the Group's Common Documentation Package is incorrect, but that it should be considered as part of the review. Other elements of the Advance Certainty Outcome that are not affected continue to apply as agreed.

¹⁷ See Footnote 7.

24. Where an Advance Certainty Outcome does not apply, if the Review Panel concludes:

- (a) that one or more of the Group's approaches to the categorisation of revenues is incorrect,
- (b) that one or more of the indicators used by the Group to source revenues to tax jurisdictions is not a Reliable Indicator, or
- (c) that an indicator is a Reliable Indicator but that, based on the conclusions of the Expert Group, the Group's internal control framework is not sufficiently robust and reliable to ensure an accurate application of the indicator,

the Review Panel may propose that the relevant category or categories of revenues be sourced using a different Reliable Method. Notwithstanding this, the Review Panel shall not recommend the use of an alternative indicator for a Period that has already ended unless the Coordinating Entity first confirms that the Group has access to information for this alternative indicator to be a Reliable Indicator for the Period. Where the Group does not have access to this information the Review Panel may recommend that the Reliable Method used by the Group is accepted or that an alternative approach is taken for the Period under review. The summary of outcomes of the review should include an explanation of this and a statement that, in the view of the Review Panel, the alternative indicator should be used by the Group in future Periods. If this approach is agreed by Affected Parties or by a decision of a Determination Panel under Section 5, the view that the alternative indicator should be used by the Group in future Periods shall be included in the agreed Comprehensive Certainty Outcome for the Period.

25. Where a request for Comprehensive Certainty is accompanied by a request for Advance Certainty, the outcomes of the Comprehensive Certainty Review and Advance Certainty Review with respect to the same provisions of the Convention or the same elements of a Group's internal control framework, for example with respect to the correct categorisation of revenues or the treatment of a Disclosed Segment, should be consistent unless there is a specific reason for reaching a different conclusion. Where such a reason exists, this should be explained in the outcomes of the reviews.

26. If, in the view of the Review Panel, the Coordinating Entity is persistently late in providing information to the Lead Tax Administration without explanation, or is acting in an un-cooperative or non-transparent manner, including by providing inaccurate or incomplete information, this issue shall be raised with the Coordinating Entity. Where this issue is not resolved, a majority of Review Panel members may conclude that a Comprehensive Certainty Outcome cannot be provided. The Coordinating Entity shall be informed of this outcome by the Lead Tax Administration and the Comprehensive Certainty Process shall be brought to an end without an agreed Comprehensive Certainty Outcome. The Coordinating Entity or any other Group Entity shall not be permitted to submit a further request for Comprehensive Certainty with respect to the Period for which a Comprehensive Certainty Outcome was not provided pursuant to this paragraph. The Competent Authorities of all Parties shall be informed of this outcome by the Competent Authority of the Lead Tax Administration. The next time the Coordinating Entity submits a request for Comprehensive Certainty under Section 2 it should provide written confirmation that the issues which resulted in the late provision of information or in it acting in an uncooperative or non-transparent manner have been addressed and will not recur.

27. A Review Panel may develop and agree further processes for the purposes of undertaking a review, so long as these are not inconsistent with any provisions of this Section.

Agreeing the outcomes of a Comprehensive Certainty Review

28. The Competent Authority of the Lead Tax Administration shall exchange with the Competent Authorities of all Affected Parties a summary of the outcomes of the Review Panel's review, prepared using the standard format in [to be agreed] and agreed with all members of the Review Panel, together with the report prepared by the Chair of the Expert Advisory Group containing the outcomes of the review of the Group's internal control framework. This may be done,

- (a) separately, at the end of the first phase of a review covering the outcomes of the first phase, and at the end of the second phase of a review covering the outcomes of the second phase, or
- (b) together at the end of the second phase of a review, covering the outcomes of both phases.

29. The summary of outcomes shall be accompanied by:

- (a) a recommendation that Affected Parties agree the application of the Convention reflected in the Common Documentation Package as filed by the Coordinating Entity,
- (b) a recommendation that Affected Parties agree specified changes to the application of the Convention reflected in the Common Documentation Package, which the Coordinating Entity should be required to reflect in an amended Common Documentation Package, or
- (c) a statement that the Review Panel has been unable to reach agreement including all members on one or more matters with respect to the application of the Convention reflected in the Common Documentation Package.

The summary of outcomes shall also be accompanied by any information provided by the Coordinating Entity that was not contained in the Group's Common Documentation Package and was relevant to the Review Panel's recommendation, the Expert Advisory Group's recommendation to the Review Panel, or to the positions of Panel members where no agreement was reached.

30. Where the Review Panel has been unable to reach agreement including all members one or more matters with respect to the application of the Convention reflected in the Common Documentation Package, the summary of outcomes of the review should clearly identify the aspects where:

- (a) the Review Panel agrees that the application of the Convention reflected in the Common Documentation Package is correct,
- (b) the Review Panel agrees specific changes that should be made to the Common Documentation Package, and
- (c) the Review Panel has been unable to reach agreement including all members, together with
 - i) a description of the specific item or items in the Group's Common Documentation Package with respect to which the Review Panel has been unable to reach agreement,

- ii) a compilation of the different positions of the members of the Review Panel, and
- iii) the change to a numeric item or other outcome proposed by any member or members of the Review Panel to address this issue or each of these issues.

31. Within [60 days] of the exchange of the summary of outcomes of the review by the Review Panel, the Competent Authority of an Affected Party may submit to the Competent Authority of the Lead Tax Administration comments:

- (a) agreeing with the recommendation of the Review Panel,
- (b) disagreeing with the recommendation of the Review Panel, together with
 - i) a description of the specific item or items in the Group's Common Documentation Package, as filed or reflecting changes recommended by the Review Panel, that the Competent Authority disagrees with,
 - ii) a paper explaining the Competent Authority's position as to why this item or each of these items reflects an incorrect application of the Convention, along with the financial impact of the item on its jurisdiction and
 - iii) the change to a numeric item or other outcome proposed by the Competent Authority to address this issue or each of these issues, or
- (c) in cases where the Review Panel has been unable to reach agreement including all members with respect to the application of one or more provisions of the Convention reflected in the Common Documentation Package,
 - i) agreeing with the position of the Review Panel with respect to aspects where the panel did reach agreement,
 - ii) disagreeing with the position of the Review Panel with respect to aspects where the panel did reach agreement, together with
 - i. a description of the specific item or items in the Group's Common Documentation Package, as filed or reflecting changes recommended by the Review Panel, that the Competent Authority disagrees with,
 - ii. a paper explaining the Competent Authority's position as to why this item or each of these items reflects an incorrect application of the Convention along with the financial impact of the item on its jurisdiction, and
 - iii. the change to a numeric item or other outcome proposed by the Competent Authority to address this issue or each of these issues, and
 - iii) commenting on the positions of members of the Review Panel with respect to aspects where the panel did not reach agreement, which may include a proposal for an alternative approach to resolve the disagreement, accompanied by an explanation of the Competent Authority's position as to why this item or each of these items

reflects the correct application of the Convention, along with the financial impact on its jurisdiction.

32. A Competent Authority of an Affected Party shall not submit written comments:
- (a) that disagree with the recommendation or the position of the Review Panel if it is not able
 - i) to identify a financial impact in its tax jurisdiction or,
 - ii) if it is not possible to identify a specific financial impact, for example where comments concern the categorisation of revenues or choice of Reliable Method, to describe a potential impact in its tax jurisdiction,
 - (b) that propose an adjustment to an amount in a Group's Common Documentation package which:
 - i) if the adjustment concerns the calculation of a Group's Total Revenues, would change Total Revenues and Profit Before Tax by less than [one percent],
 - ii) if the adjustment concerns the calculation of a Group's Profit Before Tax, would change Profit Before Tax by less than [one percent],
 - iii) if the adjustment concerns the allocation of a Group's Profit Before Tax, would change the allocation to that Affected Party by less than [five percent], and
 - iv) if the adjustment concerns the allocation of the obligation to provide relief for the elimination of double taxation, would change the relief provided by that Affected Party by less than [five percent],¹⁸
 - (c) that are inconsistent with an earlier agreed Comprehensive Certainty Outcome for the same Group for a Period in which it was an Affected Party, unless in the view of the Affected Party such comment is necessary for a correct application of the Convention, in which case an explanation of the reason for this should be provided,¹⁹ or
 - (d) that are inconsistent with any agreed Advance Certainty Outcome that applies for the Period, unless the Affected Party was not an Affected Party when the Advance Certainty Outcome was agreed, or it previously provided evidence of a Relevant Change for consideration by the Review Panel under paragraph 19.

33. Where the Competent Authority of an Affected Party does not submit any comments by the deadline for comments, this shall be taken for the purposes of this Section as agreement with the recommendation of the Review Panel.

34. Where the Competent Authority of an Affected Party has submitted written comments that disagree with the recommendation or the position of the Review Panel, or

¹⁸ As noted in the Background, commentators should note that this does not reflect the final or consensus views of the Inclusive Framework and that members hold different views as to whether a materiality threshold should apply to the adjustments proposed by an Affected Party, and as to the appropriate level of a threshold if one did apply. Members also hold different views as to whether such a materiality threshold should apply to adjustments proposed by the Review Panel when undertaking a Comprehensive Certainty Review under this Section.

¹⁹ See Footnote 7.

which propose an alternative approach to resolve disagreement between Review Panel members, the Review Panel may:

- (a) determine whether to adopt the Affected Party's proposal, and if so the Competent Authority of the Lead Tax Administration will exchange with the Competent Authorities of all Affected Parties a revised recommendation in accordance with paragraph 29 and other Affected Parties may submit written comments in accordance with paragraph 31, and
- (b) consult with the Competent Authority of that Affected Party to explore whether, in light of other information they can provide, the Affected Party is still of the opinion that changes are needed or wishes to withdraw its disagreement with the recommendation.

The consultation under (b) may extend up to [30 days] following the deadline for comments.

Concluding a Comprehensive Certainty Review

35. If the Review Panel recommended that Affected Parties agree the application of the Convention to issues reflected in the Common Documentation Package as filed by the Coordinating Entity, and no Competent Authorities submitted written comments that disagreed with this recommendation by the deadline for comments, or if all such written comments are withdrawn following consultation, the review shall move to a second phase or conclude with an agreed Comprehensive Certainty Outcome in accordance with the recommendation of the Review Panel, as relevant.

36. If the Review Panel recommended that Affected Parties agree specified changes to the application of the Convention to issues reflected in the Common Documentation Package, and no Competent Authorities submitted written comments that disagreed with the recommendation of the Review Panel by the deadline for comments, or if all such written comments are withdrawn following consultation, the Lead Tax Administration shall require the Coordinating Entity to prepare and file an amended Common Documentation Package within [90 days] reflecting these changes.

37. Where paragraph 36 applies and an amended Common Documentation Package is filed by the Coordinating Entity, this shall be reviewed by the Review Panel to ensure the required changes to the application of the Convention have been correctly reflected. No new changes shall be proposed by the Review Panel. If the Review Panel concludes that all required changes to the Common Documentation Package have been made, the Competent Authority of the Lead Tax Administration shall exchange the amended Common Documentation Package with the Competent Authorities of the Affected Parties, and the review shall move to a second phase or conclude with an agreed Comprehensive Certainty Outcome, as relevant. If the Review Panel concludes that certain required changes to the amended Common Documentation Package have not been made, the Lead Tax Administration shall inform the Coordinating Entity, and the Coordinating Entity shall be required to further revise the Common Documentation Package. If the Coordinating Entity does not agree to prepare an amended Common Documentation Package it shall be deemed to have withdrawn its request for Comprehensive Certainty after a Comprehensive Certainty Outcome had been agreed:

- (a) with respect to issues covered in the first phase of the review, or
- (b) with respect to issues covered in both phases of the review,

as relevant.

38. Where the Review Panel did not reach agreement including all members with respect to the application of the Convention to issues reflected in the Common Documentation Package, or if the Competent Authority of one or more Affected Parties submitted written comments disagreeing with a recommendation of the Review Panel by the deadline for comments that were not subsequently withdrawn, issues where there is disagreement shall be submitted to a Determination Panel for a final outcome, under the process described in Section 5.

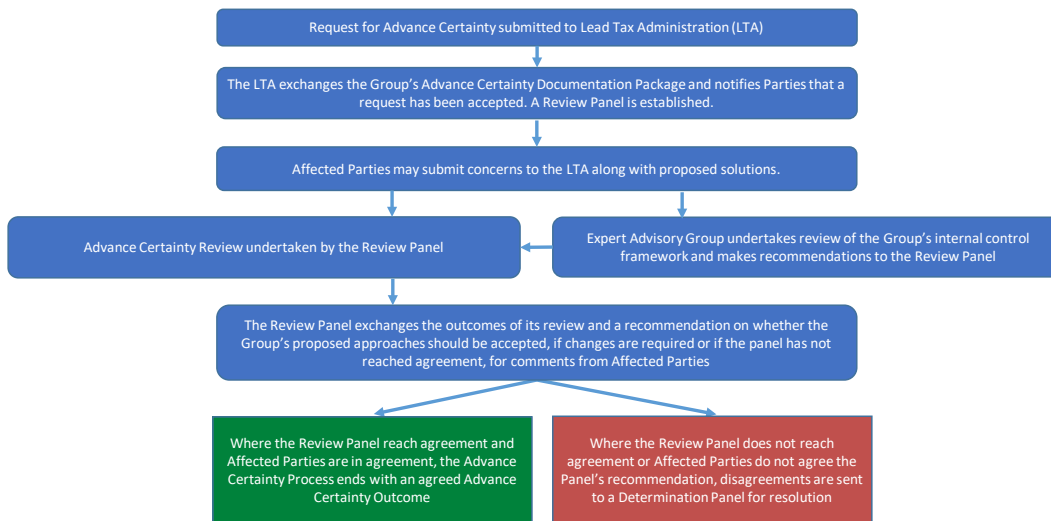
39. Where the Review Panel sought comments from Affected Parties separately at the end of the first phase and at the end of the second phase of its review,

- (a) where there is disagreement over matters considered in the first phase, these shall be referred to the Determination Panel for resolution before the review progresses to the second phase, and
- (b) where there is disagreement over matters considered in the second phase, these shall be referred to the Determination Panel for resolution before the review progresses to an agreed Comprehensive Certainty Outcome.

In these cases, and to the extent possible, the same Determination Panel should resolve disagreements with respect to each phase of the Review Panel's review.

40. Where the Review Panel sought comments from Affected Parties only at the end of the second phase of its review, and there are disagreements over matters considered in both phases, the Review Panel should consider referring disagreements over matters considered in the first phase to the Determination Panel first. If this Determination Panel process requires any changes to the Group's Common Documentation Package which have a corresponding impact on matters considered in the second phase of the review, Affected Parties which submitted written comments on these matters that were not subsequently withdrawn shall be given [30 days] to update their written comments and in particular the specific changes they propose to deal with their concerns. This is not an opportunity to raise new issues, but is to ensure that the alternative outcomes presented to the Determination Panel concerning matters in the second phase of the review reflect the impact of the Determination Panel's decisions on the first phase. Disagreements over matters considered in the second phase shall then be referred to the Determination Panel under the process in Section 5.

An Advance Certainty Review by a Review Panel



Undertaking an Advance Certainty Review

41. An Advance Certainty Review shall commence on a date agreed by the Review Panel. The Competent Authority of the Lead Tax Administration shall inform the Competent Authorities of all Affected Parties not on the Review Panel of the agreed start date for its review before the review is due to commence. Where a Coordinating Entity submits both a request for Comprehensive Certainty for a Period and a request for Advance Certainty with respect to a future Period, there may be benefits if these reviews commence at approximately the same time, but this is not essential. In particular, where a Comprehensive Certainty Review is delayed due to an expected amendment of documents relied upon in the Common Documentation Package, this should not delay commencement of an Advance Certainty Review.

42. The Review Panel shall undertake a review on behalf of all Parties, coordinated by the Lead Tax Administration, to determine whether the approach or approaches proposed in the Advance Certainty Documentation Package filed by the Coordinating Entity reflect a correct application of the aspects of the Convention covered by the request for Advance Certainty. The Review Panel shall endeavour to reach agreement including all members. Where the Review Panel does not agree that one or more of the proposed approaches reflects a correct application of the Convention, but is able to identify changes which, if agreed by the Group, would address this, the review of that approach should cease with a recommendation that these changes be required.

43. In parallel with the review by the Review Panel in paragraph 42, the Expert Advisory Group shall undertake a review of the Group's internal control framework to determine whether in the view of the Expert Advisory Group members it is robust and will be able to be relied upon to ensure the accuracy of information reported in future Periods. Where the Expert Advisory Group identifies aspects of this internal control framework that may not be robust or reliable it shall discuss its findings with the Review Panel to obtain evidence to determine whether the framework is in fact robust and can be relied upon. The Expert Advisory Group shall endeavour to reach agreement including all members on each relevant aspect of the Group's internal control framework.

44. Where the Expert Advisory Group does not agree that an element of the Group's internal control framework is currently robust and reliable, but is able to identify a combination of improvements to that framework which, if implemented by the Group, would address this, the review of that element should cease with a recommendation that these improvements be required. Where an element of the Group's internal control framework is not robust and reliable and no combination of improvements can be identified to address the Expert Advisory Group's concerns, the Review Panel shall be informed of this and the review of that element should cease.

45. The Lead Tax Administration and Chair of the Expert Advisory Group shall cooperate to ensure that the reviews in paragraph 42 and paragraph 43 are coordinated, so that progress on one review can be taken into account in ongoing work on the other review. At the end of the review of the Group's internal control framework, the Chair of the Expert Advisory Group shall provide a report to the Review Panel setting out the work the Expert Advisory Group has undertaken and, as a result of this work, whether in the view of the Expert Group the internal control framework is robust or reliable or what improvements should be required. The report will also highlight any differences in opinion between members of the Expert Advisory Group.

46. Paragraphs 18 to 20 and 25 to 27 also apply for the purposes of an Advance Certainty Review, with necessary modifications.

Agreeing the outcomes of an Advance Certainty Review

47. At the end of an Advance Certainty Review, the Competent Authority of the Lead Tax Administration shall exchange with the Competent Authorities of all Affected Parties a summary of the outcomes of the Review Panel's review, prepared using the standard format in [to be agreed] and agreed with all members of the Review Panel, together with the report prepared by the Chair of the Expert Advisory Group containing the outcomes of the review of the Group's internal control framework.

48. With respect to each of the proposed approaches in the Advance Certainty Documentation Package, the summary of outcomes shall be accompanied by:

- (a) a recommendation that Affected Parties agree the proposed approach as filed by the Coordinating Entity,
- (b) a recommendation that Affected Parties agree specified changes to the proposed approach, which the Coordinating Entity should be required to reflect in an amended Advance Certainty Documentation Package in order for Advance Certainty to be granted, or
- (c) a statement that the Review Panel has been unable to reach agreement including all members on the proposed approach.

49. The summary of outcomes shall also be accompanied by:

- (a) a recommendation that Affected Parties agree that the Group's internal control framework is robust and reliable with respect to one or more of the proposed approaches as filed by the Coordinating Entity or reflecting required changes, as applicable,
- (b) a recommendation that Affected Parties agree that specified improvements to the Group's internal control framework with respect to one or more of these approaches be required in order for Advance Certainty to apply, or

- (c) a statement that the Group's internal framework with respect to one or more of these approaches does not appear to be robust or reliable, and it has not been possible to identify specific improvements to address this.

50. The summary of outcomes shall further be accompanied by any information provided by the Coordinating Entity that was not contained in the Group's Advance Certainty Documentation Package and was relevant to the Review Panel's recommendation, the Expert Advisory Group's recommendation to the Review Panel or to the positions of Panel members where no agreement was reached.

51. Where the Review Panel has been unable to reach agreement including all members on one or more matters with respect to the proposed approaches reflected in the Advance Certainty Documentation Package, the summary of outcomes of the review should clearly identify the aspects where:

- (a) the Review Panel agrees that a proposed approach reflected in the Advance Certainty Documentation Package is correct,
- (b) the Review Panel agrees specific changes that should be required to a proposed approach, and
- (c) the Review Panel has been unable to reach agreement including all members, together with
 - i) a description of the specific aspects of a proposed approach with respect to which the Review Panel has been unable to reach agreement,
 - ii) a compilation of the different positions of the members of the Review Panel, and
 - iii) the change to a proposed approach suggested by any member or members of the Review Panel to address this issue or each of these issues.

52. Within [60 days] of the exchange of the summary of outcomes of the review by the Review Panel, the Competent Authority of an Affected Party may submit to the Competent Authority of the Lead Tax Administration comments:

- (a) agreeing with a recommendation of the Review Panel,
- (b) disagreeing with a recommendation of the Review Panel with respect to one or more of the proposed approaches in the Group's Advance Certainty Documentation Package, together with a paper explaining the Competent Authority's position as to:
 - i) why a proposed approach, as filed or reflecting changes recommended by the Review Panel, does not reflect an accurate application of the Convention, and
 - ii) the alternative approach proposed by the Competent Authority with an explanation as to why in the view of the Competent Authority this reflects a more accurate application of the Convention,
- (c) in cases where the Review Panel has been unable to reach agreement including all members with respect to one or more proposed approaches reflected in the Advance Certainty Documentation Package,
 - i) agreeing with the position of the Review Panel with respect to aspects where the panel did reach agreement,

- ii) disagreeing with the position of the Review Panel with respect to aspects where the panel did reach agreement, together with a paper explaining the Competent Authority's position as to:
 - i. why a proposed approach, as filed or reflecting changes recommended by the Review Panel, does not reflect an accurate application of the Convention, and
 - ii. the alternative approach proposed by the Competent Authority with an explanation as to why in the view of the Competent Authority this reflects a more accurate application of the Convention,
 - iii) commenting on the positions of members of the Review Panel with respect to aspects where the panel did not reach agreement, which may include a proposal for an alternative approach to resolve the disagreement, accompanied by an explanation of the Competent Authority's position as to why this reflects the correct application of the Convention, or
- (d) disagreeing with a recommendation or conclusion with respect to the Group's internal control framework, together with a paper explaining the Competent Authority's position as to:
- i) why in the view of the Competent Authority the Group's internal control framework with respect to one or more proposed approaches seems robust and reliable, or
 - ii) why in the view of the Competent Authority this internal control framework does not seem robust and reliable, together with specific improvements proposed by the Competent Authority to address this.

53. A Competent Authority of an Affected Party shall not submit written comments that are inconsistent with an earlier agreed Comprehensive Certainty Outcome or Advance Certainty Outcome for the same Group for a Period in which it was an Affected Party, unless in the view of the Affected Party such comments are necessary for a correct application of the Convention, in which case an explanation of the reason for this should be provided.²⁰

54. Where the Competent Authority of an Affected Party does not submit any comments by the deadline for comments, this shall be taken for the purposes of this Section as agreement with the recommendations and conclusions of the Review Panel.

55. Where the Competent Authority of an Affected Party has submitted written comments that disagree with the recommendation or the position of the Review Panel, or which propose an alternative approach to resolve disagreement between Review Panel members, the Review Panel, in consultation with the Expert Advisory Group, shall:

- (a) determine whether to adopt the Affected Party's proposal, and if so the Competent Authority of the Lead Tax Administration will exchange with the Competent Authorities of all Affected Parties a revised recommendation in accordance with paragraph 48 or paragraph 49 and other Affected Parties may submit written comments in accordance with paragraph 52, and

²⁰ See Footnote 7.

- (b) consult with the Competent Authority of that Affected Party to explore whether, in light of other information they can provide, the Affected Party is still of the opinion that changes are needed or wishes to withdraw its disagreement with the recommendation.

The consultation under (b) may extend up to [30 days] following the deadline for comments.

Concluding an Advance Certainty Review

56. If under paragraph 48 the Review Panel recommended that that Affected Parties agree one or more of the proposed approaches reflected in the Advance Certainty Documentation Package as filed by the Coordinating Entity and no Competent Authorities submitted written comments that disagreed with this recommendation by the deadline for comments, or if all such written comments are withdrawn following consultation, the review shall conclude with an agreed Advance Certainty Outcome in accordance with the recommendation of the Review Panel.

57. If under paragraph 48 the Review Panel recommended that Affected Parties agree specified changes to one or more of the proposed approaches reflected in the Advance Certainty Documentation Package, and no Competent Authorities submitted written comments that disagreed with the recommendation of the Review Panel by the deadline for comments, or if all such written comments are withdrawn following consultation, the Lead Tax Administration shall require the Coordinating Entity to prepare and file an amended Advance Certainty Documentation Package within [90 days] reflecting these changes.

58. Where paragraph 57 applies and an amended Advance Certainty Documentation Package is filed by the Coordinating Entity, this shall be reviewed by the Review Panel to ensure the required changes to the proposed approaches have been correctly reflected. No new changes shall be proposed by the Review Panel. If the Review Panel concludes that all required changes to the Advance Certainty Documentation Package have been made, the Competent Authority of the Lead Tax Administration shall exchange the amended Advance Certainty Documentation Package with the Competent Authorities of the Affected Parties, and the review shall conclude with an agreed Advance Certainty Outcome. If the Review Panel concludes that certain required changes to the amended Advance Certainty Documentation Package have not been made, the Lead Tax Administration shall inform the Coordinating Entity, and the Coordinating Entity shall be required to further revise the Advance Certainty Documentation Package. If the Coordinating Entity does not agree to prepare an amended Advance Certainty Documentation Package it shall be deemed to have withdrawn its request for Advance Certainty.

59. Where:

- (a) an Advance Certainty Outcome is agreed under paragraph 56 or paragraph 58,
- (b) under paragraph 49 the Review Panel recommended that that Affected Parties agree that the Group's internal control framework with respect to the relevant proposed approach is robust and reliable, and
- (c) no Competent Authorities submitted written comments that disagreed with this recommendation by the deadline for comments, or if all such written comments are withdrawn following consultation,

the Advance Certainty Outcome shall apply for the Period specified in the request for Advance Certainty and other Periods set out in paragraph 61.

60. Where:

- (a) an Advance Certainty Outcome is agreed under paragraph 56 or paragraph 58,
- (b) under paragraph 49 the Review Panel recommended that that Affected Parties agree that specified improvements be required to the Group's internal control framework with respect to the relevant proposed approach in order for an Advance Certainty Outcome to apply, and
- (c) no Competent Authorities submitted written comments that disagreed with this recommendation by the deadline for comments, or if all such written comments are withdrawn following consultation,

the Advance Certainty Outcome shall apply for the Period specified in the request for Advance Certainty and other Periods set out in paragraph 61, on condition that the Coordinating Entity demonstrates that the specified improvements have been made and this is confirmed by an Expert Advisory Group as part of a Comprehensive Certainty Review process.

61. The first time a Group makes a request for Advance Certainty over a particular aspect of the Convention, an Advance Certainty Outcome will be granted for all Periods of the Group ending within [three] years of the start of the Period specified in the request. For the subsequent requests, the Review Panel may agree to extend this period to [five] years.²¹ Where paragraph 60 applies and the time taken by a Group to introduce required improvements to its internal control framework mean that an Advance Certainty Outcome does not start to apply until a Period later than that specified in the request for Advance Certainty, the maximum period that can be covered by an Advance Certainty Outcome continues to be calculated from the Period specified in the request.

62. Where paragraph 58 applies and the Review Panel accepts that the Group does not have or will not have data available for it to apply the agreed approach for the first Period covered by Advance Certainty, the Advance Certainty Outcome may agree that the Group can use an alternative approach for this Period. The Group shall be required to collect the information necessary to use the agreed approach for future Periods.

63. Where the Review Panel did not reach agreement including all members with respect to one or more of the proposed approaches in the Group's Advance Certainty Documentation Package, or if the Competent Authority of one or more Affected Parties submitted written comments disagreeing with a recommendation of the Review Panel by the deadline for comments that were not subsequently withdrawn, issues where there is disagreement shall be submitted to a Determination Panel for a final outcome, under the process described in Section 5.

Circumstances where an Advance Certainty Outcome ceases to apply

64. An agreed Advance Certainty Outcome shall cease to apply:

- (a) at the end of the last Period specified in paragraph 61, or
- (b) where a Relevant Change has occurred.

²¹ The number of years for which Advance Certainty will be provided remains to be agreed.

65. For the purposes of this Section, a Relevant Change is:
- (a) a change to the organisational structure, business activities (including marketing and distribution activities) or financial and tax accounting methods of the Group, that means an approach covered by an Advance Certainty Outcome may no longer reflect an accurate application of the Convention, or
 - (b) a change to the design or operation of the internal control framework of the Group that means the controls to ensure the accurate reporting of information with respect to an approach covered by an Advance Certainty Outcome may no longer be robust and reliable.
66. Where a Group anticipates or becomes aware of a Relevant Change, the Coordinating Entity should inform the Lead Tax Administration of this fact. The Competent Authority of the Lead Tax Administration shall then share this information with the Competent Authorities of Affected Parties. When the Coordinating Entity next submits the Group's Common Documentation Package for a Period that has ended, it may also submit a new request for Advance Certainty under Section 2.

4. Review by a Lead Tax Administration on behalf of the Parties

1. Where a request for Comprehensive Certainty is accepted in accordance with the process in Section 2 for a Period which is not governed by the provisions of Section 3, a review of the Group's application of the Convention reflected in its Common Documentation Package shall be undertaken by the Lead Tax Administration under this Section, supported by an Expert Advisory Group of systems specialists. The steps for a Lead Tax Administration review are the same as those for a Review Panel review, with the modifications described below.

2. A review by a Lead Tax Administration should not commence until any review that has already commenced under Section 3 or this Section for an earlier Period of the Group is completed. Where a request for Comprehensive Certainty is accepted under Section 2 in circumstances where:

- (a) a request for Comprehensive Certainty has been accepted with respect to one or more earlier Periods of the Group for which a review pursuant to this Section will be undertaken, but the review by the Lead Tax Administration for those Periods has not yet commenced, and/or
- (b) a request for Comprehensive Certainty is accepted with respect to one or more later Periods of the Group for which a review pursuant to this Section will be undertaken, before the review by the Lead Tax Administration has commenced,

the Lead Tax Administration may undertake the reviews for up to [three] Periods most closely preceding or most closely following the Period specified in the request for Comprehensive Certainty, simultaneously with the review for that Period.

3. If, in the view of the Lead Tax Administration, the Coordinating Entity is persistently late in providing information without explanation, is acting in an un-cooperative or non-transparent manner, including by providing inaccurate or incomplete information, or where information provided proves to be unreliable, this issue shall be raised with the Coordinating Entity. Where this issue is not resolved, the Lead Tax Administration may conclude that a Comprehensive Certainty Outcome cannot be provided. The Coordinating Entity shall be informed of this outcome by the Lead Tax Administration and the Comprehensive Certainty Process shall be brought to an end without an agreed Comprehensive Certainty Outcome. The next review for any subsequent Period of the Group shall be undertaken by a Review Panel under Section 3 and the Coordinating Entity may request that the Review Panel simultaneously undertakes a review with respect to the Period for which a Comprehensive Certainty Outcome was not provided pursuant to this paragraph. The Competent Authorities of all Parties shall be informed of this outcome by the Competent Authority of the Lead Tax Administration. The next time the Coordinating Entity submits a request for Comprehensive Certainty under Section 2 it should provide written confirmation that the issues which resulted in the late provision of information or in it acting in an uncooperative or non-transparent manner have been addressed and will not recur.

4. Paragraphs of Section 3 that concern processes for discussions and agreement by members of a Review Panel, and the consequences of this agreement not being reached, are not applicable to a review by a Lead Tax Administration.

III. A DETERMINATION PANEL TO RESOLVE DISAGREEMENTS

5. Resolution of disagreements by a Determination Panel

Compiling alternative outcomes and comments for a Determination Panel

1. Where a review of the application of the Convention by a Group for a Period has been conducted under the approaches described in Section 1, Section 3 or Section 4, and issues remain with respect to which agreement has not been possible, these issues shall be resolved by a Determination Panel.

2. Within [30 days] of a determination under Section 1 that one or more issues considered as part of a Scope Certainty Review or Follow-Up Scope Certainty Review will be submitted to a Determination Panel for a final outcome, the Competent Authority of the Lead Tax Administration shall exchange with the Competent Authorities of all Listed Parties:

- (a) with respect to issues that had been agreed by the Scope Review Panel or in cases where a review was undertaken by a Lead Tax Administration,
 - i) a list of the specific items in a Group's Scope Certainty Documentation Package or Follow-Up Scope Certainty Documentation Package with respect to which written comments were submitted and not withdrawn, and,
 - ii) for each of these items, alternative outcomes comprising:
 - i. the outcome recommended by the Scope Review Panel or Lead Tax Administration to Listed Parties, with an explanation of its basis for this recommendation, and
 - ii. each alternative specific outcome proposed by a Competent Authority of a Listed Party together with the papers prepared under Section 1 by each Competent Authority explaining its position as to why this would reflect a more accurate application of the Convention.
- (b) with respect to issues that had not been agreed by the Scope Review Panel,
 - i) a list of the specific items in a Group's Scope Certainty Documentation Package or Follow-Up Scope Certainty Documentation Package with respect to which the Review Panel did not reach agreement, and
 - ii) for each of these items, alternative outcomes comprising:
 - i. if the outcome in the Group's Scope Certainty Documentation Package or Follow-Up Scope Certainty Documentation Package is supported by one or more members of the Scope Review Panel, this outcome with an explanation of their basis for supporting this approach,
 - ii. each alternative specific outcome not covered by paragraph (b) ii) i. proposed by one or more members of the Scope Review Panel, together with papers prepared by Panel members under Section 1 explaining their position as to why

in their view this would reflect a more accurate application of the Convention, and

- iii. each alternative specific outcome proposed by a Competent Authority of a Listed Party together with the papers prepared by each Competent Authority under Section 1 explaining its position as to why this would reflect a more accurate application of the Convention.

3. Within [30 days] of a determination under Section 3 that one or more issues considered as part of a Comprehensive Certainty Review by a Review Panel will be submitted to a Determination Panel for a final outcome, the Competent Authority of the Lead Tax Administration shall exchange with the Competent Authorities of all Affected Parties:

(a) with respect to issues that had been agreed by the Review Panel,

- i) a list of the specific items in a Group's Common Documentation Package with respect to which written comments were submitted and not withdrawn, and,
- ii) for each of these items, alternative outcomes comprising:
 - i. the outcome recommended by the Review Panel to Affected Parties, with an explanation of its basis for this recommendation, and
 - ii. each alternative specific outcome proposed by a Competent Authority of an Affected Party together with the papers prepared under Section 3 by each Competent Authority explaining its position as to why this would reflect a more accurate application of the Convention.

(b) with respect to issues that had not been agreed by the Review Panel,

- i) a list of the specific items in a Group's Common Documentation Package with respect to which the Review Panel did not reach agreement, and
- ii) for each of these items, alternative outcomes comprising:
 - i. if the outcome in the Group's Common Documentation Package is supported by one or more members of the Review Panel, this outcome with an explanation of their basis for supporting this approach,
 - ii. each alternative specific outcome not covered by paragraph (b) ii) i. proposed by one or more members of the Review Panel, together with papers prepared by Panel members under Section 3 explaining their position as to why in their view this would reflect a more accurate application of the Convention, and
 - iii. each alternative specific outcome proposed by a Competent Authority of an Affected Party together with the papers prepared by each Competent Authority under Section 3 explaining its position as to why this would reflect a more accurate application of the Convention.

4. Within [30 days] of a determination under Section 3 that one or more issues considered as part of an Advance Certainty Review by a Review Panel will be submitted to a Determination Panel for a final outcome, the Competent Authority of the Lead Tax Administration shall exchange with the Competent Authorities of all Affected Parties:

- (a) with respect to issues that had been agreed by the Review Panel,
 - i) a list of the specific items in a Group's Advance Certainty Documentation Package with respect to which written comments were submitted and not withdrawn, and,
 - ii) for each of these items, alternative outcomes comprising:
 - i. the approach recommended by the Review Panel to Affected Parties, with an explanation of its basis for this recommendation, and
 - ii. each alternative approach proposed by a Competent Authority of an Affected Party together with the papers prepared under Section 3 by each Competent Authority explaining its position as to why this would reflect a more accurate application of the Convention.
- (b) with respect to issues that had not been agreed by the Review Panel,
 - i) a list of the specific items in a Group's Advance Certainty Documentation Package with respect to which the Review Panel did not reach agreement, and
 - ii) for each of these items, alternative outcomes comprising:
 - i. if the proposed approach in the Group's Advance Certainty Documentation Package is supported by one or more members of the Review Panel, this approach with an explanation of their basis for supporting the approach,
 - ii. each alternative approach not covered by paragraph (b) ii) i. proposed by one or more members of the Review Panel, together with papers prepared by Panel members under Section 3 explaining their position as to why in their view this would reflect a more accurate application of the Convention, and
 - iii. each alternative approach proposed by a Competent Authority of an Affected Party together with the papers prepared by each Competent Authority under Section 3 explaining its position as to why this would reflect a more accurate application of the Convention.

5. Within [30 days] of it being determined under Section 4 that one or more issues considered by the Lead Tax Administration will be submitted to a Determination Panel for a final outcome, the Competent Authority of the Lead Tax Administration shall exchange with the Competent Authorities of all Affected Parties:

- (a) a list of the specific items in a Group's Common Documentation Package with respect to which written comments were submitted and not withdrawn, and,
- (b) for each of these items, alternative outcomes comprising:

- i) the outcome recommended by the Lead Tax Administration to Affected Parties, with an explanation of its basis for this recommendation, and
- ii) each alternative specific outcome proposed by a Competent Authority of an Affected Party together with the papers prepared by each Competent Authority under Section 4 explaining its position as to why this would reflect a more accurate application of the Convention.

6. Within [30 days] of an exchange under paragraphs 2 to 5, Competent Authorities of Listed Parties or Affected Parties may submit written comments to the Competent Authority of the Lead Tax Administration supporting or disagreeing with any of the alternative outcomes for each issue, which may be accompanied by a paper explaining the Competent Authority's position as to why in its view an alternative outcome reflects an accurate or inaccurate application of the Convention. Within [30 days] of this deadline the Competent Authority of the Lead Tax Administration shall exchange these comments and papers with the Competent Authorities of all Listed Parties or Affected Parties.

7. Within [30 days] of the deadline for written comments in paragraph 6, the Lead Tax Administration shall provide members of the Determination Panel with:

- (a) a list of specific items in a Group's Scope Documentation Package, Follow-Up Scope Documentation Package, Common Documentation Package or Advance Certainty Documentation Package with respect to which written comments were submitted and not withdrawn, for resolution by the Panel,
- (b) for each item, the alternative outcomes referred to under paragraphs 2 to 5, together with the papers prepared by each Competent Authority explaining its position as to why these outcomes would reflect a more accurate application of the Convention,
- (c) the written comments and any papers submitted under paragraph 6 setting out the positions of Competent Authorities of Listed Parties or Affected Parties, agreeing or disagreeing with these alternative outcomes,
- (d) the Scope Documentation Package, Follow-Up Scope Documentation Package, Common Documentation Package or Advance Certainty Documentation Package filed by the Coordinating Entity and any changes to these agreed by Affected Parties or Listed Parties, and
- (e) any explanation provided by the Coordinating Entity as to the position it took with respect to any item on which the Listed Parties or Affected Parties have not reached agreement, even where this position is not one of the alternative outcomes supported by the Scope Review Panel, Review Panel, Lead Tax Administration, or one or more Listed Parties or Affected Parties and presented to the Determination Panel for it to choose between.²²

²² As noted in the Background, commentators should note that this does not reflect the final or consensus views of the Inclusive Framework and that some members hold the view that any explanation by the Coordinating Entity as to the position it took, including a position that is not one of the alternative outcomes put to a Determination Panel to choose between, should not be provided to the Determination Panel as, in their view, this would be inconsistent with the resolution mechanism of choosing between the alternative outcomes presented by the Parties.

The information contained in (a) to (e) shall also be provided by the Competent Authority of the Lead Tax Administration to the Competent Authority of any Listed Party or Affected Party on request.

Undertaking a Determination Panel process

8. The Determination Panel, coordinated by the Chair, shall resolve the specific issues submitted for resolution by choosing between the two or more alternative outcomes put to it. The Determination Panel may request clarification of these issues and alternative outcomes from Affected Parties or Listed Parties via the Lead Tax Administration, but this is not an opportunity for new arguments to be raised. Any clarification provided to the Determination Panel shall also be made available by the Competent Authority of the Lead Tax Administration to the Competent Authorities of Listed Parties or Affected Parties. The Determination Panel may not request additional information from the Coordinating Entity or Group Entities. The Determination Panel does not have any discretion to develop and choose an alternative outcome that is not presented to it, or to comment on issues other than the specific issues submitted to it for resolution.

9. The Determination Panel shall endeavour to reach agreement on each issue by consensus including all members but, where this is not possible, the Determination Panel shall choose the outcome which is supported by an overall majority comprising more than one half of the panel. Where there are more than two alternative outcomes for a particular issue and no outcome is supported by an overall majority on the panel, the Chair shall invite Panel Members to rank all alternative outcomes in order of preference in order to identify the alternative outcome chosen.

Selecting an alternative outcome by ranked voting²³

Where there are more than two alternative outcomes for a particular issue put to a Determination Panel to resolve, an outcome shall be chosen by ranked voting. This may be done in different ways, including the examples included below. Other approaches will also be considered in deciding on that to be applied by a Determination Panel.

Example 1: Elimination of alternative outcomes with the fewest first choice preferences

This example assumes a seven member Determination Panel and an issue to be resolved with four alternative outcomes. No alternative outcome is supported by an overall majority on the panel and so Panel Members have been asked to rank the alternative outcomes in order of preference, 1 being their preferred alternative outcome and 4 being their least preferred. The results of this, and the process to identify the alternative outcome chosen by the panel, is set out below.

Alternative Outcomes	Determination Panel Members						
	A	B	C	D	E	F	G

²³ The approach to be used by a Determination Panel to choose between more than two alternative outcomes where there is no overall majority support for one outcome is to be agreed. The examples included here are illustrative only and their inclusion does not suggest that one of these approaches will be adopted nor that an alternative approach will not be adopted.

Alt. Outcome 1	1	1	1	4	4	4	4
Alt. Outcome 2	2	2	2	2	2	2	2
Alt. Outcome 3	4	4	3	1	1	3	3
Alt. Outcome 4	3	3	4	3	3	1	1

Alternative Outcome 2 is the only outcome that is not the first choice of any Panel Member. This alternative outcome is eliminated and the remaining three alternative outcomes are ranked by the Chair in their order of preference for each Panel Member.

Alternative Outcomes	Determination Panel Members						
	A	B	C	D	E	F	G
Alt. Outcome 1	1	1	1	3	3	3	3
Alt. Outcome 3	3	3	2	1	1	2	2
Alt. Outcome 4	2	2	3	2	2	1	1

Of the three remaining alternative outcomes, Alternative Outcome 1 is the first choice of three Panel Members whereas Alternative Outcome 3 and alternative Outcome 4 are both the first choice of two Panel Members. As there is no single alternative outcome with the lowest number of first choice votes, second preferences are taken into account. Alternative Outcome 3 is the second choice outcome of three Panel Members while Alternative Outcome 4 is the second choice of four Panel Members. Therefore Alternative Outcome 3 is eliminated and the remaining two outcomes are ranked by the Chair in order of preference for each Panel Member.

Alternative Outcomes	Determination Panel Members						
	A	B	C	D	E	F	G
Alt. Outcome 1	1	1	1	2	2	2	2
Alt. Outcome 4	2	2	2	1	1	1	1

Of the two remaining outcomes, Alternative Outcome 1 is the first choice of three Panel Members, while Alternative Outcome 4 is now the first choice of four Panel Members. As Alternative Outcome 4 is the preferred outcome by an overall majority on the Determination Panel, this is the alternative outcome chosen by the panel.

Example 2: Allocating points to each alternative outcome

This example is based on the same fact pattern as Example 1. Panel Members have been asked to rank the alternative outcomes in order of preference, 1 being their preferred alternative outcome and 4 being their least preferred. The results and the process to identify the chosen alternative outcome is set out below.

This approach can be applied in different ways. For the purposes of this example, the Chair allocates five points to each first choice preference, three points to each

second choice preference and one point to each third choice preference (the number of points varies depending upon the number of alternative outcomes the Determination Panel is to choose from). The points allocated to each alternative outcome are shown below.

Alternative Outcomes	Determination Panel Members							Total points
	A	B	C	D	E	F	G	
Alt. Outcome 1	5	5	5	0	0	0	0	15
Alt. Outcome 2	3	3	3	3	3	3	3	21
Alt. Outcome 3	0	0	1	5	5	1	1	13
Alt. Outcome 4	1	1	0	1	1	5	5	14

Alternative Outcome 2 has the most total points and so is the alternative outcome chosen by the Determination Panel. This is despite this alternative outcome not being the first choice of any Panel Member. However, while all of the other alternative outcomes were the first choice of some Panel Members, they were also the least favourite alternative outcome of other Panel Members. As Alternative Outcome 2 was the second preference of all Panel Members, this is sufficient for it to be considered the alternative outcome with the greatest overall support from the panel.

10. The Determination Panel shall resolve all of the issues submitted to it at a particular time and deliver its decisions as a single compilation, within [90 days] of these issues being submitted. Where issues are submitted to the same Determination Panel which relate to different reviews or different phases of a review, the Panel's decisions shall be delivered in separate compilations corresponding to these reviews or phases.

11. As described in Section 6, the composition of a Determination Panel is not yet agreed. To the extent necessary, measures would be put in place to ensure the confidentiality of information provided by Groups and exchanged by the Lead Tax Administration with members of the Determination Panel for the purposes of this section.

12. A Determination Panel may develop and agree further processes for the purposes of resolving issues put to it, so long as these are not inconsistent with any provisions of this Section.

Outcomes of a Determination Panel process

13. Where the decisions of the Determination Panel require no further changes to the Scope Certainty Documentation Package, Follow-Up Scope Certainty Documentation Package, Common Documentation Package or Advance Certainty Documentation Package, then, as applicable,

- (a) a review under Section 3 or Section 4 shall progress to a second phase, or
- (b) a review under Section 1, Section 3 or Section 4 shall conclude with an agreed Scope Certainty Outcome, Comprehensive Certainty Outcome or Advance Certainty Outcome in accordance with that Scope Certainty Documentation Package, Follow-Up Scope Certainty Documentation Package, Common Documentation Package or Advance Certainty

Documentation Package, including any changes previously agreed by Listed Parties or Affected Parties.

14. Where the Coordinating Entity submitted a Scope Certainty Documentation Package under Section 1 on the basis that the Group is not a Covered Group, but this conclusion is not supported by a decision of the Determination Panel, the Scope Certainty Process concludes with a Scope Certainty Outcome that the Group is a Covered Group. The Coordinating Entity shall be given [90 days] to prepare a Common Documentation Package on the basis the Group is a Covered Group and file this with the Lead Tax Administration.

15. Where the Coordinating Entity submitted a Follow-Up Scope Certainty Documentation Package under Section 1 on the basis that the Group is not a Covered Group, but this conclusion is not supported by a decision of the Determination Panel, the Coordinating Entity:

- (a) may prepare a complete Scope Certainty Review Documentation Package and file this with the Lead Tax Administration within [90 days] together with a request for Scope Certainty, or
- (b) may prepare a Common Documentation Package on the basis that the Group is a Covered Group and file this with the Lead Tax Administration within [90 days].

16. Where the Coordinating Entity submitted a request for Comprehensive Certainty under Section 2, and the decisions of the Determination Panel with respect to issues referred to it following a review under Section 3 or Section 4 require changes to the Group's Common Documentation Package, the Coordinating Entity shall be given [90 days] to prepare an amended Common Documentation Package reflecting these decisions as well as changes previously agreed by Affected Parties, and to file this with the Lead Tax Administration. If the Coordinating Entity does not agree to make the changes described in this paragraph, it is deemed to have withdrawn its request for Comprehensive Certainty after a Comprehensive Certainty Outcome had been agreed

- (a) with respect to issues covered in the first phase of the review, or
- (b) with respect to issues covered in both phases of the review,

as relevant.

17. Where:

- (a) paragraph 16 applies,
- (b) the Group is required by a decision of the Determination Panel to source one or more categories of revenue using an alternative indicator to that used in the Common Documentation Package, and
- (c) the Group does not have access to information for the alternative indicator to be a Reliable Indicator for the Period,

the Group may use the relevant default allocation key for the purposes of sourcing this or these categories of revenues for the Period. The agreed Comprehensive Certainty Outcome shall include an explanation of this and a statement that, in the view of the Determination Panel, the alternative indicator should be used by the Group in future Periods.

18. Where the Coordinating Entity submitted a request for Advance Certainty under Section 2, and the decisions of the Determination Panel with respect to issues referred to

it following a review under Section 3 require changes to the Group's Advance Certainty Documentation Package, the Coordinating Entity shall be given [90 days] to prepare an amended Advance Certainty Documentation Package reflecting these decisions as well as changes previously agreed by Affected Parties, and to file this with the Lead Tax Administration. If the Coordinating Entity does not agree to make the changes described in this paragraph, it is deemed to have withdrawn its request for Advance Certainty.

19. Where paragraph 16 or paragraph 18 applies and an amended Common Documentation Package or Advance Certainty Documentation Package is filed by the Coordinating Entity with the Lead Tax Administration, the Competent Authority of the Lead Tax Administration shall within [30 days] exchange this amended Documentation Package with the Competent Authorities of all Affected Parties. Within [30 days] of this exchange the Competent Authority of an Affected Party may submit written comments to the Competent Authority of the Lead Tax Administration that it disagrees with how the Determination Panel's decisions have been taken into account by the Coordinating Entity in the amended Documentation Package. This is not an opportunity for a Competent Authority to question any decision of the Determination Panel, but only how those decisions has been taken into account. Where the Competent Authority of an Affected Party does not submit written comments by this deadline it shall be taken for the purposes of this paragraph as agreeing to how the Determination Panel's decisions have been taken into account in the amended Documentation Package. Any disagreements as to whether or not the Determination Panel's decisions have been correctly taken into account shall be exchanged with the Competent Authorities of all Affected Parties for information. The Lead Tax Administration may discuss these issues with the Coordinating Entity and the Competent Authorities of Affected Parties to resolve any disagreement. Where a disagreement is not resolved it shall be referred to the Determination Panel for a final decision. Where possible, this panel should include the same members that considered the issues originally. Where one or more of these members is not available, their places should be filled using the process in Section 6.

6. Composition of a Determination Panel²⁴

Option A: Independent Expert only Panel

1. The Determination Panel referred to in Section 5 shall consist of [five] individual members, comprising:
 - (a) [One] Independent Expert nominated to the UPE Pool referred to in paragraph [5] by the Party in which the Ultimate Parent Entity of the Relevant Group is resident for tax purposes, chosen by random selection from all Independent Experts nominated by such Party to the UPE Pool, who is not conflicted to act in such capacity under paragraph [3(b)]; and
 - (b) [Four] Independent Experts nominated to the Standing Pool referred to in paragraph [4] by the remaining Parties, chosen by random selection from all Independent Experts in the Standing Pool, who are not conflicted to act in such capacity under paragraph [3(b)].
2. The [five] members of a Determination Panel shall agree by consensus to appoint a Chair from among themselves. Failing consensus within [15] days from the establishment of the Determination Panel, a Chair shall be chosen by random selection from the members of the Determination Panel.
3. For the purposes of this Section:
 - (a) a “Relevant Group” is the Group that made the application in respect of which the determination was made that one or more issues would be submitted to a Determination Panel following a review conducted under the approaches described in Section 1, Section 3 or Section 4.
 - (b) an individual is conflicted to act in a Determination Panel involving a Relevant Group where, at the time of appointment:
 - i) they or a Family Member were an employee, contractor or Significant Investor, or had Significant Business Dealings with such Relevant Group, in the previous [five] years, or continue to derive benefits of any kind from such engagements or relationships that existed in any prior period; or
 - ii) they, directly or as part of or on behalf of an enterprise or firm, were personally involved in providing tax services or accounting/audit services to such Relevant Group in the previous [five] years.
4. A Standing Pool comprising Independent Experts shall be established for the purposes of the Determination Panel as follows:
 - (a) The Standing Pool shall be considered established within [60] days from the [entry into force] of the Convention.²⁵

²⁴ Recognising that there are divergent views among jurisdictions as regards the composition of the Determination Panel, particularly as to whether the composition should include independent experts only or Government officials only, three options are presented for the purpose of receiving input from stakeholders. Commentators on this part of the document should note that none of these options represent final or consensus views of the Inclusive Framework at present.

²⁵ The mechanism for the establishment of the Standing Pool and for nominations made and approved by Parties is subject to a final decision on the critical mass of jurisdictions required to ratify the Convention for it to come

- (b) The Standing Pool shall, from its time of establishment, include at least [200] individual Independent Experts, which shall be the Minimum Pool Size. However, the Standing Pool may from time to time also include individual Independent Experts nominated by new Parties to this Convention, without limitation as to the maximum size.
- (c) Each Party may nominate [two] individuals who are willing to participate in the Determination Panel for consideration as an Independent Expert in the Standing Pool by submitting to the Tax Certainty Secretariat those individuals' names and detailed curriculum vitae together with a statement explaining how they fulfil the requirements of an Independent Expert under paragraph [6]. There shall be no requirement that nominated individuals are residents or citizens of or have any connection with a nominating Party.
- (d) A Party shall submit nominations to the Tax Certainty Secretariat within [60] days of the entry into effect of this Convention for such Party. The Tax Certainty Secretariat shall then communicate such nominations and accompanying documentation to the Screening Committee as soon as possible.
- (e) The Tax Certainty Secretariat shall add a nominated individual to the draft roster of the Standing Pool if the Screening Committee agrees by consensus, or failing consensus within [30] days from reference to the Screening Committee, by consensus-minus-one, that a nominated individual is an Independent Expert as defined under paragraph [6] and that the nominated individual is suitable for such role.
- (f) The decision of the Screening Committee with respect to each nominated individual shall be communicated to the Party nominating such individual by the Tax Certainty Secretariat within [60] days from the date of such nomination.
- (g) Within [30] days of the Screening Committee communication of its decision to not add a nominated individual to the Standing Pool, the Party nominating such individual may nominate one alternative individual for consideration as an Independent Expert in the Standing Pool.
- (h) The Tax Certainty Secretariat shall invite each Party to nominate one additional Independent Expert if the total number of nominations received under paragraph [4(c)] are fewer than the Minimum Pool Size or if the total number of Independent Experts in the Standing Pool drops below the Minimum Pool Size for any other reason. The Screening Committee may add such nominated individuals to the draft roster of the Standing Pool under paragraph [4(e)] to the extent required to meet the Minimum Pool Size. However, each nominating jurisdiction shall have a maximum of [four] individuals nominated by it included in total to the draft roster of the Standing Pool.
- (i) Once a nominated candidate is added to the draft roster of the Standing Pool, the details of such candidate shall be shared by the Tax Certainty Secretariat with all Parties as soon as possible. All Parties shall be allowed to object to the addition of a candidate in the draft roster of the Standing

into force and effect for each Party, since the aim is to ensure that enough Independent Experts are in the Standing Pool to participate in Determination Panels for all relevant Covered Groups.

Pool solely on the grounds that they fail to meet one or more of the requirements in paragraph [6] to qualify as an Independent Expert. If more than [two-thirds] of the Parties do not object to the addition of a candidate to the Standing Pool within [30] days, the candidate shall be added to the Standing Pool for a period of [five years] and the Tax Certainty Secretariat shall communicate such addition to the Parties as soon as possible thereafter. Within [30] days of the communication by the Tax Certainty Secretariat of a candidate not being added to the Standing Pool, the Party nominating such individual may nominate one alternative individual for consideration as an Independent Expert in the Standing Pool.

- (j) If a Party establishes to the satisfaction of the Screening Committee that an individual in the Standing Pool fails to remain an Independent Expert at any time following their addition to the Standing Pool, the Screening Committee may recommend removal of such individual from the Pool. All Parties shall be allowed to object to the removal of a candidate from the Standing Pool. If more than [two-third] of the Parties do not object to the removal of a candidate from the Standing Pool within [30] days, the candidate shall be removed from the Standing Pool. Within [30] days of the Screening Committee communicating its decision to remove a nominated individual from the Standing Pool, the Party nominating such individual may nominate one alternative individual for consideration as an Independent Expert in the Standing Pool.

5. A UPE Pool comprising Independent Experts shall be established for the purposes of the Determination Panel following the same rules as applicable to the Standing Pool under paragraph [4], except that:

- (a) Nominations shall only be made to the UPE Pool by Parties in which the Ultimate Parent Entity of any Group is resident for tax purposes.
- (b) Each nominating Party shall nominate a minimum of [one] individual to the UPE Pool for every Group with an Ultimate Parent Entity resident for tax purposes in that Party, without any limitation as to the maximum number of individuals that may be nominated by each Party to the UPE Pool.

6. An individual shall be considered an Independent Expert for the purposes of this Section where such individual:

- (a) is a person of high moral character and may be relied upon to exercise independent judgment and conduct themselves in a professional manner;
- (b) has at least [six] years of relevant experience in dealing with corporate income tax matters;
- (c) has sufficient expertise in international taxation and/or financial accounting matters;
- (d) does not work for or on behalf of any tax administration or Government and was not in such a situation at any time during the previous [12 months], irrespective of whether the individual is/was on secondment to a regional tax organisation or an international organisation during this time (for the purposes of this subparagraph, a person who has accepted an appointment as a member of a Determination Panel or Dispute Resolution Panel provided for under this Convention, as an arbitrator in a proceeding pursuant to Part VI of the Multilateral Convention, or pursuant to the provisions of any other bilateral or multilateral agreement or domestic law

provision providing for the arbitration or dispute resolution of unresolved issues in a mutual agreement procedure case, will not be considered based on such appointment to be employed, or to have been employed, by any competent authority, tax administration or ministry of finance);

- (e) does not provide tax advisory services that are not Limited Tax Advisory Services or provide such services on behalf of any enterprise or firm or was not in such a situation at any time during the previous [12 months]; and
- (f) does not work for or on behalf of a regional tax organisation or international organisation that is not specified in [list of international organisations to be added to the Convention].

Explanation: For the purposes of this paragraph, “Limited Tax Advisory Services” refers to tax advisory services where the annual income earned by an individual from such services is less than [30 percent] of the individual’s total annual income, including income from employment, contractual services, pensions or other retirement benefits.

7. A Screening Committee shall be established for the purposes of the Determination Panel as follows:

- (a) The Screening Committee shall be established within [60] days from the entry into force of the Convention.
- (b) Each Party may nominate one individual for consideration as a member of the Screening Committee. Each nominated individual shall be a senior member of the delegation representing that Party in the Inclusive Framework and shall provide a written statement indicating that individual’s willingness to participate in such process and undertaking to act in an independent, impartial and transparent manner if selected to the Screening Committee.
- (c) A Party shall submit a nomination for consideration as a member of the Screening Committee to the Tax Certainty Secretariat within [30] days of the entry into effect of this Convention for such Party. The Tax Certainty Secretariat shall then communicate such nominations to the Chair(s) of the Conference of the Parties as soon as possible thereafter.
- (d) The Chair(s) of the Conference of the Parties shall, following consultation with the Parties, make a proposal to all Parties for the composition of the Screening Committee, ensuring that:
 - i) the selected members have adequate seniority and objectivity,
 - ii) all geographical regions are adequately represented,
 - iii) jurisdictions most likely to be affected by the outcomes in Determination Panels are adequately represented.
- (e) Based on the proposal made by the Chair(s) of the Conference of the Parties, the composition of the Screening Committee shall be decided by the Parties by consensus. Where consensus is not possible within [30] days from the reference of the proposal to the Parties, the composition shall be decided by consensus among at least [two-thirds] of the Parties.

8. The Tax Certainty Secretariat shall coordinate the random selection of the individual members of the Determination Panel and/or the Chair under this Section, with no reference to the jurisdiction that nominated them, either by drawing lots or by using a recognised algorithm, and shall ensure that pure randomisation is maintained in this

process to ensure neutrality. The Tax Certainty Secretariat shall inform all selected Independent Experts of their selection as soon as possible.

9. Within [15] days from being informed by the Tax Certainty Secretariat of such selection, the selected Independent Experts shall inform the Tax Certainty Secretariat whether they are willing to participate in the Panel and conflicted to act in a Panel under paragraph [3(b)].²⁶ Where Independent Experts are willing to participate in the Panel and not conflicted to act in a Panel under paragraph [3(b)], they shall along with such intimation provide to the Tax Certainty Secretariat a written statement stating that they are not conflicted under paragraph [3(b)] at the time of accepting appointment, that they undertake to remain not conflicted under paragraph [3(b)] throughout the proceeding as well as for a reasonable period of time following the relevant proceeding and that they will act with objectivity, independence and impartiality. The Tax Certainty Secretariat shall share this written statement with all Affected Parties as soon as possible following receipt.

10. The Tax Certainty Secretariat shall share individual letters with each selected Independent Expert confirming their selection as soon as possible after the receipt of each written statement, following which each Independent Expert shall return a signed copy of the same to the Tax Certainty Secretariat within [15] days. The Determination Panel shall be considered established on the date when the last of the signed individual letters is received by the Tax Certainty Secretariat.

11. An individual selected at random from the Standing Pool or the UPE Pool shall be replaced at random from the Standing Pool or the UPE Pool, respectively, where:

- (a) such individual is not willing to act in a Determination Panel as communicated to the Tax Certainty Secretariat under paragraph [9].
- (b) such individual is conflicted to act in a Determination Panel under paragraph [3(b)] as communicated to the Tax Certainty Secretariat under paragraph [9] or where an Affected Party can establish that such individual is conflicted to act in a Determination Panel under paragraph [3(b)] to the satisfaction of the Screening Committee within [30] days of the intimation of the written statement.
- (c) such individual was nominated to the Standing Pool by a Party that nominated another individual who has already been randomly selected to the same Determination Panel.
- (d) such individual is, at the time of selection, actively participating in [three] other Determination Panels.

12. Until the time where the Conference of the Parties has been created and Chair(s) are elected for the Conference of the Parties, any references to “Conference of the Parties” in this Section shall be replaced by “Inclusive Framework”.²⁷

²⁶ The Commentary will clarify that this is also intended to signify an Independent Expert’s consent for personal information such as their profile and annual income relevant to this mechanism being disclosed to the Tax Certainty Secretariat and all Parties in both Option A and Option C.

²⁷ As noted in the Background, commentators should note that this does not reflect the final or consensus views of the Inclusive Framework and that there are differing views on whether the Inclusive Framework may act in place of the Conference of the Parties in such circumstances.

Option B: Government Official only Panel

1. The Determination Panel referred to in Section 5 shall consist of individual members, comprising:

(a) in the case of Determination Panels to resolve disagreements arising in a Scope Certainty Review, [seven] Government Officials as follows:

- i) [One] Government Official nominated by the jurisdiction of the Lead Tax Administration.
- ii) [Three] Government Officials nominated by jurisdictions chosen by random selection from Listed Parties excluding the jurisdiction of the Lead Tax Administration where, based on information provided by the Group,
 - i. for a Group seeking to apply the exclusion for revenues derived from the sale of Extractive Products, the Group has a license in effect to explore for or exploit Minerals, Mineraloids and Hydrocarbons; or
 - ii. for a Group seeking to apply the exclusion for revenues derived from the provision of Regulated Financial Services, the Group has an employee headcount which amounts to at least [five percent] of total group headcount
- iii) [Three] Government Officials nominated by jurisdictions chosen by random selection from the Listed Parties excluding the jurisdiction of the Lead Tax Administration or jurisdictions included in paragraph 1(a)(ii).

(b) in the case of all other Determination Panels, [seven] Government Officials as follows:

- i) [One] Government Official nominated by the jurisdiction of the Lead Tax Administration.
- ii) [Three] Government Officials nominated by jurisdictions chosen by random selection from the Affected Parties required to provide relief for the Elimination of Double Taxation with respect to the Relevant Group for the Period based on the information contained in the Common Documentation Package, which expressed interest to participate in the Determination Panel, excluding the jurisdiction of the Lead Tax Administration.
- iii) [Three] Government Officials nominated by jurisdictions chosen by random selection from the Affected Parties in which the Relevant Group meets the Nexus threshold for the Period, based on the information contained in the Common Documentation Package, which expressed interest to participate in the Determination Panel, excluding the jurisdiction of the Lead Tax Administration or jurisdictions included in paragraph 1(b)(ii).

2. The Tax Certainty Secretariat shall invite Affected Parties covered by paragraph 1 to submit an expression of interest for a Government Official nominated by an Affected Party to participate in the Determination Panel within [30 days] of the creation of a Determination Panel as under Section 5. An Affected Party should only express interest in participating in a Determination Panel if the person nominated by it is committed to

taking an active role on the Determination Panel and the Affected Party concerned would apply sufficient resources to ensure this is possible.

3. The [seven] members of a Determination Panel shall agree by consensus to appoint a Chair from among themselves. Failing consensus within [15] days from the establishment of the Determination Panel, a Chair shall be chosen by random selection from the members of the Determination Panel.

4. For the purposes of this Section, a “Relevant Group” is the Group that made the application in respect of which the determination was made that one or more issues would be submitted to a Determination Panel following a review conducted under the approaches described in Section 1, Section 3 or Section 4.

5. An individual shall be considered a Government Official for the purposes of this Section where such individual:

- (a) is a person of high moral character and may be relied upon to conduct themselves in a professional manner;
- (b) presently belongs to or works for or on behalf of a function in the tax administration or Government of a jurisdiction, not being the audit and examination function, and has at least [three] years of relevant experience working in the field of international taxation or transfer pricing for the tax administration or Government of such jurisdiction;
- (c) has sufficient expertise in international taxation and/or financial accounting matters.

6. The Tax Certainty Secretariat shall coordinate the random selection of the individual members of the Determination Panel and/or the Chair either by drawing lots or by using a recognised algorithm and shall ensure that pure randomisation is maintained in this process to ensure neutrality.

7. The Tax Certainty Secretariat shall share individual letters with each selected Government confirming their selection as soon as possible after the selection, following which each Government Official shall return a signed copy of the same to the Tax Certainty Secretariat within [15] days. The Determination Panel shall be considered established on the date when the last of the signed individual letters is received by the Tax Certainty Secretariat.

8. Where there are less than [three]:

- (a) Listed Parties in which the Group has a license in effect to explore for or exploit Minerals, Mineraloids and Hydrocarbons, any reference to “[three]” in paragraph 1(a)(ii)i shall be replaced by “[one]”.
- (b) Listed Parties in which the Group has an employee headcount which amounts to at least [five percent] of total group headcount, any reference to “[three]” in paragraph 1(a)(ii)ii shall be replaced by “[one]”.
- (c) Listed Parties excluding the jurisdiction of the Lead Tax Administration or jurisdictions included in paragraph 1(a)(ii), any reference to “[three]” in paragraph 1(a)(iii) shall be replaced by “[one]”.
- (d) Affected Parties required to provide relief for the Elimination of Double Taxation with respect to the Relevant Group for the Period based on the information contained in the Common Documentation Package, which expressed interest to participate in the Determination Panel, excluding the

jurisdiction of the Lead Tax Administration, any reference to “[three]” in paragraph 1(b)(ii) shall be replaced by “[one]”.

- (e) Affected Parties in which the Relevant Group meets the Nexus threshold for the Period, based on the information contained in the Common Documentation Package, which expressed interest to participate in the Determination Panel, excluding the jurisdiction of the Lead Tax Administration or jurisdictions included in paragraph 1(b)(ii), any reference to “[three]” in paragraph 1(b)(iii) shall be replaced by “[one]”.

9. Where there are no Listed Parties covered in paragraph 1(a)(ii), any reference to “[three]” in paragraph 1(a)(iii) shall be replaced by “[six]”.

Option C: Mixed Panel

1. The Determination Panel referred to in Section 5 shall consist of [seven] individual members, comprising:

- (a) [Three] Independent Experts nominated to the Standing Pool referred to in paragraph [4], chosen by random selection from all Independent Experts in the Standing Pool, who are not conflicted to act in such capacity under paragraph [3(b)]

(b) [Three] Government Officials as follows:

- i) in the case of Determination Panels to resolve disagreements arising in a Scope Certainty Review:
- i. [One] Government Official nominated by the jurisdiction of the Lead Tax Administration.
 - ii. [One] Government Official nominated by a jurisdiction chosen by random selection from Listed Parties excluding the jurisdiction of the Lead Tax Administration where, based on information provided by the Group,
 1. for a Group seeking to apply the exclusion for revenues derived from the sale of Extractive Products, the Group has a license in effect to explore for or exploit Minerals, Mineraloids and Hydrocarbons; or
 2. for a Group seeking to apply the exclusion for revenues derived from the provision of Regulated Financial Services, the Group has an employee headcount which amounts to at least [five percent] of total group headcount
 - iii. [One] Government Official nominated by a jurisdiction chosen by random selection from the Listed Parties, excluding the jurisdiction of the Lead Tax Administration or jurisdictions included in paragraph 1(b)(i)ii.

Where there are no Listed Parties covered in paragraph 1(b)(i)ii, any reference to “[one]” in paragraph 1(b)(i)iii shall be replaced by “[two]”.

- ii) in the case of all other Determination Panels:

- i. [One] Government Official nominated by the jurisdiction of the Lead Tax Administration.
 - ii. [One] Government Official nominated by a jurisdiction chosen by random selection from the Affected Parties required to provide relief for the Elimination of Double Taxation with respect to the Relevant Group for the Period based on the information contained in the Common Documentation Package, which expressed interest to participate in the Determination Panel, excluding the jurisdiction of the Lead Tax Administration,
 - iii. [One] Government Official nominated by a jurisdiction chosen by random selection from the Affected Parties in which the Relevant Group meets the Nexus threshold for the Period, based on the information contained in the Common Documentation Package, which expressed interest to participate in the Determination Panel, excluding the jurisdiction of the Lead Tax Administration or jurisdictions included in paragraph 1(b)(ii).
- iii) [One] Independent Expert, who is not conflicted to act in such capacity under paragraph [3(b)], chosen as Chair from the Independent Experts in the Standing Pool by consensus among the [six] previously selected Independent Experts and Government Officials. Failing consensus within [30] days from the last selected member of the [six] previously selected Panellists, a Chair shall be chosen by random selection from among the Independent Experts in the Standing Pool who are not conflicted to act in such capacity under paragraph [3(b)].

2. The Tax Certainty Secretariat shall invite Affected Parties covered by paragraph 1 to submit an expression of interest for a Government Official nominated by an Affected Party to participate in the Determination Panel within [30 days] of the creation of a Determination Panel as under Section 5. An Affected Party should only express interest in participating in a Determination Panel if the person nominated by it is committed to taking an active role on the Determination Panel and the Affected Party concerned would apply sufficient resources to ensure this is possible.

3. For the purposes of this Section:

- (a) a “Relevant Group” is the Group that made the application in respect of which the determination was made that one or more issues would be submitted to a Determination Panel following a review conducted under the approaches described in Section 1, Section 3 or Section 4.
- (b) an individual is conflicted to act in a Determination Panel involving a Relevant Group where, at the time of appointment:
 - i) they or a Family Member were an employee, contractor or Significant Investor, or had Significant Business Dealings with such Relevant Group, in the previous [five] years, or continue to derive benefits of any kind from such engagements or relationships that existed in any prior period; or

- ii) they, directly or as part of or on behalf of an enterprise or firm, were personally involved in providing tax services or accounting/audit services to such Relevant Group in the previous [five] years.

4. A Standing Pool comprising Independent Experts shall be established for the purposes of the Determination Panel as follows:

- (a) The Standing Pool shall be considered established within [60] days from the entry into force of the Convention.
- (b) The Standing Pool shall, from its time of establishment, include at least [150] individual Independent Experts, which shall be the Minimum Pool Size. However, the Standing Pool may from time to time also include individual Independent Experts nominated by new Parties to this Convention, without limitation as to the maximum size.
- (c) Each Party may nominate [two] individuals who are willing to participate in the Determination Panel for consideration as an Independent Expert in the Standing Pool by submitting to the Tax Certainty Secretariat those individuals' names and detailed curriculum vitae together with a statement explaining how they fulfil the requirements of an Independent Expert under paragraph [5]. There shall be no requirement that nominated individuals are residents or citizens of or have any connection with a nominating Party.
- (d) A Party shall submit nominations to the Tax Certainty Secretariat within [60] days of the entry into effect of this Convention for such Party. The Tax Certainty Secretariat shall then communicate such nominations and accompanying documentation to the Screening Committee as soon as possible.
- (e) The Tax Certainty Secretariat shall add a nominated individual to the draft roster of the Standing Pool if the Screening Committee agrees by consensus, or failing consensus within [30] days from reference to the Screening Committee, by consensus-minus-one, that a nominated individual is an Independent Expert as defined under paragraph [5] and that the nominated individual is suitable for such role.
- (f) The decision of the Screening Committee with respect to each nominated individual shall be communicated to the Party nominating such individual by the Tax Certainty Secretariat within [60] days from the date of such nomination.
- (g) Within [30] days of the Screening Committee communication of its decision to not add a nominated individual to the Standing Pool, the Party nominating such individual may nominate one alternative individual for consideration as an Independent Expert in the Standing Pool.
- (h) The Tax Certainty Secretariat shall invite each Party to nominate one additional Independent Expert each if the total number of nominations received under paragraph [4(c)] are fewer than the Minimum Pool Size or if the total number of Independent Experts in the Standing Pool drops below the Minimum Pool Size for any other reason. The Screening Committee may add such nominated individuals to the draft roster of the Standing Pool under paragraph [4(e)] to the extent required to meet the Minimum Pool Size. However, each nominating Party shall have a maximum of [four] individuals nominated by it included in total to the draft roster of the Standing Pool.

- (i) Once a nominated candidate is added to the draft roster of the Standing Pool, the details of such candidate shall be shared by the Tax Certainty Secretariat with all Parties as soon as possible. All Parties shall be allowed to object to the addition of a candidate in the draft roster of the Standing Pool solely on the grounds that they fail to meet one or more of the requirements in paragraph [5] to qualify as an Independent Expert. If more than [two-thirds] of the Parties do not object to the addition of a candidate to the Standing Pool within [30] days, the candidate shall be added to the Standing Pool for a period of [five years] and the Tax Certainty Secretariat shall communicate such addition to the Parties as soon as possible thereafter. Within [30] days of the communication by the Tax Certainty Secretariat of a candidate not being added to the Standing Pool, the Party nominating such individual may nominate one alternative individual for consideration as an Independent Expert in the Standing Pool.
- (j) If a Party establishes to the satisfaction of the Screening Committee that an individual in the Standing Pool fails to remain an Independent Expert at any time following their addition to the Standing Pool, the Screening Committee may recommend removal of such individual from the Pool. All Parties shall be allowed to object to the removal of a candidate from the Standing Pool. If more than [two-third] of the Parties do not object to the removal of a candidate from the Standing Pool within [30] days, the candidate shall be removed from the Standing Pool. Within [30] days of the Screening Committee communicating its decision to remove a nominated individual from the Standing Pool, the Party nominating such individual may nominate one alternative individual for consideration as an Independent Expert in the Standing Pool.

5. An individual shall be considered an Independent Expert for the purposes of this Section where such individual:

- (a) is a person of high moral character and may be relied upon to exercise independent judgment and conduct themselves in a professional manner;
- (b) has at least [six] years of relevant experience in dealing with corporate income tax matters;
- (c) has sufficient expertise in international taxation and/or financial accounting matters;
- (d) does not work for or on behalf of any tax administration or Government and was not in such a situation at any time during the previous [12 months], irrespective of whether the individual is/was on secondment to a regional tax organisation or an international organisation during this time (for the purposes of this subparagraph, a person who has accepted an appointment as a member of a Determination Panel or Dispute Resolution Panel provided for under this Convention, as an arbitrator in a proceeding pursuant to Part VI of the Multilateral Convention, or pursuant to the provisions of any other bilateral or multilateral agreement or domestic law provision providing for the arbitration or dispute resolution of unresolved issues in a mutual agreement procedure case, will not be considered based on such appointment to be employed, or to have been employed, by any competent authority, tax administration or ministry of finance);

- (e) does not provide tax advisory services that are not Limited Tax Advisory Services or provide such services on behalf of any enterprise or firm or was not in such a situation at any time during the previous [12 months]; and
- (f) does not work for or on behalf of a regional tax organisation or international organisation that is not specified in [list of international organisations to be added to the Convention].

Explanation: For the purposes of this paragraph, “Limited Tax Advisory Services” refers to tax advisory services where the annual income earned by an individual from such services is less than [30 percent] of the individual’s total annual income, including income from employment, contractual services, pensions or other retirement benefits.

6. An individual shall be considered a Government Official for the purposes of this Section where such individual:

- (a) is a person of high moral character and may be relied upon to conduct themselves in a professional manner;
- (b) presently belongs to or works on behalf of a function in the tax administration or Government of a jurisdiction, not being the audit and examination function, and has at least [three] years of relevant experience working in the field of international taxation or transfer pricing for the tax administration or Government of such jurisdiction;
- (c) has sufficient expertise in international taxation and/or financial accounting matters.

7. A Screening Committee shall be established for the purposes of the Determination Panel as follows:

- (a) The Screening Committee shall be established within [60] days from the entry into force of the Convention.
- (b) Each Party may nominate one individual for consideration as a member of the Screening Committee. Each nominated individual shall be a senior member of the delegation representing that Party in the Inclusive Framework and shall provide a written statement indicating that individual’s willingness to participate in such process and undertaking to act in an independent, impartial and transparent manner if selected to the Screening Committee.
- (c) A Party shall submit a nomination for consideration as a member of the Screening Committee to the Tax Certainty Secretariat within [30] days of the entry into effect of this Convention for such Party. The Tax Certainty Secretariat shall then communicate such nominations to the Chair(s) of the Conference of the Parties as soon as possible thereafter.
- (d) The Chair(s) of the Conference of the Parties shall, following consultation with the Parties, make a proposal to all Parties for the composition of the Screening Committee, ensuring that:
 - i) the selected members have adequate seniority and objectivity,
 - ii) all geographical regions are adequately represented,
 - iii) jurisdictions most likely to be affected by the outcomes in Determination Panels are adequately represented.

- (e) Based on the proposal made by the Chair(s) of the Conference of the Parties, the composition of the Screening Committee shall be decided by the Parties by consensus. Where consensus is not possible within [30] days from the reference of the proposal to the Parties, the composition shall be decided by consensus among at least [two-thirds] of the Parties.

8. The Tax Certainty Secretariat shall coordinate the random selection of the individual members of the Determination Panel and/or the Chair under this Section either by drawing lots or by using a recognised algorithm and shall ensure that pure randomisation is maintained in this process to ensure neutrality. The Tax Certainty Secretariat shall inform all selected Independent Experts and Government Officials of their selection as soon as possible.

9. Within [15] days from being informed by the Tax Certainty Secretariat of such selection, the selected Independent Experts shall inform the Tax Certainty Secretariat whether they are willing to participate in the Panel and conflicted to act in a Panel under paragraph [3(b)]. Where Independent Experts are willing to participate in the Panel and not conflicted to act in a Panel under paragraph [3(b)], they shall along with such intimation provide to the Tax Certainty Secretariat a written statement stating that they are not conflicted under paragraph [3(b)] at the time of accepting appointment, that they undertake to remain not conflicted under paragraph [3(b)] throughout the proceeding as well as for a reasonable period of time following the relevant proceeding and that they will act with objectivity, independence and impartiality. The Tax Certainty Secretariat shall share this written statement with all Affected Parties as soon as possible following receipt.

10. The Tax Certainty Secretariat shall share individual letters with each selected Independent Expert and Government Official confirming their selection as soon as possible after the receipt of each written statement, following which each Independent Expert and Government Official shall return a signed copy of the same to the Tax Certainty Secretariat within [15] days. The Determination Panel shall be considered established on the date when the last of the signed individual letters is received by the Tax Certainty Secretariat.

11. An Independent Expert selected at random from the Standing Pool shall be replaced at random from the Standing Pool where:

- (a) such individual is not willing to act in a Determination Panel as communicated to the Tax Certainty Secretariat under paragraph [9].
- (b) such individual is conflicted to act in a Determination Panel under paragraph [3(b)] as communicated to the Tax Certainty Secretariat under paragraph [9] or where an Affected Party can establish that such individual is conflicted to act in a Determination Panel under paragraph [3(b)] to the satisfaction of the Screening Committee within [30] days of the intimation of the written statement.
- (c) such individual was nominated to the Standing Pool by a Party that nominated another individual who has already been randomly selected to the same Determination Panel.
- (d) such individual is, at the time of selection, actively participating in [three] other Determination Panels.

12. Until the time where the Conference of Parties has been created and Chair(s) are elected for the Conference of Parties, any references to “Conference of Parties” in this Section shall be replaced by “Inclusive Framework”.²⁸

²⁸ As noted in the Background, commentators should note that this does not reflect the final or consensus views of the Inclusive Framework and that there are differing views on whether the Inclusive Framework may act in place of the Conference of the Parties in such circumstances.

IV. THE WITHDRAWAL OF A REQUEST FOR CERTAINTY AND CERTAINTY OUTCOMES

7. Withdrawal of a request for certainty

1. A Coordinating Entity may withdraw a request for Scope Certainty, Comprehensive Certainty or Advance Certainty at any time through a written notification to the Lead Tax Administration. Where this occurs, within [30 days] of it being received from the Coordinating Entity the Competent Authority of the Lead Tax Administration shall exchange this written notification with:

- (a) the Competent Authorities of all Parties, where a request for Scope Certainty or Comprehensive Certainty was submitted under Section 1 or Section 2, or
- (b) the Competent Authorities of Affected Parties, where a request for Advance Certainty was submitted under Section 2.

2. Where a Coordinating Entity withdraws a request for Scope Certainty or Comprehensive Certainty, or is deemed to do so where the Coordinating Entity does not agree to required changes to its Scope Certainty Documentation Package or Common Documentation Package, nothing in this Convention shall prevent:

- (a) a Listed Party or Affected Party from relying upon any work conducted by the Scope Review Panel, Review Panel or Lead Tax Administration, or information exchanged by the Competent Authority of the Lead Tax Administration, in the course of a review under Section 1, Section 3 or Section 4,
- (b) a Party from undertaking any domestic compliance activity permitted under its domestic law,
- (c) a Party from allowing a Group Entity to rely on the domestic procedure of that Party, or
- (d) the Coordinating Entity submitting a request for Scope Certainty, Comprehensive Certainty or Advance Certainty with respect to the application of the Convention to the Group for a subsequent Period.

8. Certainty Outcomes

1. Where a Scope Certainty Process or Follow-Up Scope Certainty Process requested under Section 1 concludes with an agreed Scope Certainty Outcome, within [30 days] of the Scope Certainty Process or Follow-Up Scope Certainty Process concluding, the Competent Authority of the Lead Tax Administration shall exchange with Competent Authorities of Listed Parties, details of the agreed Scope Certainty Outcome, in the format contained in [to be agreed]. If the agreed Scope Certainty Outcome included a conclusion that the Group is not a Covered Group, no Listed Party shall undertake any compliance activity related to the application of Parts II to V and Section 1 of Part VI of the Convention²⁹ to the Group for the Period. Nothing in this paragraph restricts any Party from undertaking compliance activity with respect to any matters not covered by the Convention or with respect to Related Issues.

2. Where a Comprehensive Certainty Process requested under Section 2 concludes with an agreed Comprehensive Certainty Outcome:

(a) within [30 days] of the Comprehensive Certainty Process concluding, the Competent Authority of the Lead Tax Administration shall exchange:

- i) with Competent Authorities of Affected Parties, details of the agreed Comprehensive Certainty Outcome, in the format contained in [to be agreed], and
- ii) with Competent Authorities of Parties that are not Affected Parties, a notification that the Comprehensive Certainty Process has concluded with an agreed Comprehensive Certainty Outcome,

(b) all Affected Parties shall take any steps necessary to implement that outcome within [180 days] of the notification in sub-paragraph (a), notwithstanding time limits in domestic law, and

(c) no Party shall undertake any compliance activity related to the application of Parts II to V and Section 1 of Part VI of the Convention⁵ to the Group for the Period which is not consistent with the agreed Comprehensive Certainty Outcome. Nothing in this paragraph restricts any Party from undertaking compliance activity with respect to any matters not covered by the Comprehensive Certainty Outcome or by the Convention, or with respect to Related Issues.

3. Where an Advance Certainty Process requested under Section 2 concludes with an agreed Advance Certainty Outcome:

(a) within [30 days] of the Advance Certainty Process concluding, the Competent Authority of the Lead Tax Administration shall exchange with Competent Authorities of Affected Parties, details of the agreed Advance Certainty Outcome, in the format contained in [to be agreed], and

(b) subject to the provisions of Section 3, no Affected Party shall propose any changes to a Group's application of the Convention that are inconsistent

²⁹ These references shall be updated once the Convention is agreed and will refer to all Parts of the Convention containing the substantive rules concerning the calculation and allocation of Amount A and the elimination of double taxation, as well as the administration of Amount A.

with that Advance Certainty Outcome for a Period to which the Advance Certainty Outcome applies.

4. The provisions of paragraph 2 shall not apply or shall cease to apply where:³⁰
- (a) the Coordinating Entity withdraws its request for Comprehensive Certainty under Section 7 or is deemed to do so under Section 3 where it does not agree to required changes to its Common Documentation Package, or
 - (b) a Group Entity submits an amended tax return or takes other steps:
 - i) to reduce the Profit Before Tax allocated to any Affected Party under the Convention, or
 - ii) to increase the relief for the elimination of double taxation required to be provided by any Affected Party under the Convention,

for a Period with respect to which a Comprehensive Certainty Outcome has been agreed. Where the Competent Authority of an Affected Party is aware that such an amended tax return has been submitted or other steps taken it may contact the Group Entity, directly or via the Lead Tax Administration, to explain the consequences of these steps for the Comprehensive Certainty Outcome, and give the Group Entity an opportunity to withdraw the steps it has taken. Otherwise, or if the Group Entity declines to withdraw these steps, the Competent Authority shall promptly notify the Competent Authority of the Lead Tax Administration, which shall exchange the notification with the Competent Authorities of all Parties.

5. Where paragraph 4 applies, nothing in this Convention prevents any Affected Party from continuing to apply the agreed Comprehensive Certainty Outcome for the Period.

³⁰ As noted in the Background, commentators should note that this document does not reflect the final or consensus views of the Inclusive Framework. One issue where members hold differing views is the approach that should be taken where a Related Issue is resolved after a Comprehensive Certainty Outcome is agreed for the Period to which the Related Issue relates. Some members hold the view that any adjustment to the allocation of profits between jurisdictions as a result of the Related Issue being resolved should be treated as arising in the Period in which the issue is resolved and should not affect the Comprehensive Certainty Outcome provided for the earlier Period. Other members hold the view that any adjustment should be taken into account in the Period to which the Related Issue relates, in particular if the Parties granting or the Group Entities claiming relief for the elimination of double tax have changed since that Period or if the Group is no longer a Covered Group.

V. OTHER PROVISIONS

9. Process for a review where a request for certainty is not made

1. Where the Coordinating Entity of a Covered Group:
 - (a) did not submit a request for Scope Certainty under Section 1 or Comprehensive Certainty under Section 2, or
 - (b) did submit a request for Scope Certainty or Comprehensive Certainty, but
 - i) subsequently withdrew this request under Section 7,
 - ii) was deemed to withdraw the request where the Coordinating Entity did not agree to required changes to the Common Documentation Package, or
 - iii) the Scope Certainty Process, Follow-Up Scope Certainty Process or Comprehensive Certainty Process came to an end without an agreed Scope Certainty Outcome or Comprehensive Certainty Outcome because the Coordinating Entity was persistently late in providing information without explanation or acted in an un-cooperative or non-transparent manner, including by providing inaccurate or incomplete information,

the Competent Authorities of two or more Parties may agree to undertake or continue a review of the application of provisions of the Convention to the Covered Group for the Period.

2. Where paragraph 1(a) applies, before commencing a review under this Section, the tax administration coordinating the review shall inform the Coordinating Entity that a review shall be undertaken. This shall include a description of the benefits of a review under Section 3 or Section 4, the outcomes of which would be binding on all Parties. The Coordinating Entity may submit a request that meets the requirements in Section 1 or Section 2 to the Lead Tax Administration within [30 days] of being informed of the review. In the event such a request is submitted, a review shall then be undertaken in accordance with Section 1, Section 3 or Section 4 as applicable, and the review under this Section shall cease.

Undertaking a review where a request for certainty is not made

The examples below illustrate how a coordinated review may be undertaken in cases where a request for certainty was not made by a Group. These examples are not exhaustive and the process in each case will depend upon choices made by the participating Parties and the issues under review. In all cases where a Group did not request certainty for a Period, the Group will be notified before a coordinated review begins and given the opportunity to submit a request for certainty under Section 1 or Section 2.

Example 1

The Coordinating Entity of Group A, a Covered Group, submits its Common Documentation Package for the Period 20X1 with its Lead Tax Administration, which

is exchanged with the Competent Authorities of Affected Parties. The Coordinating Entity does not make a request for Comprehensive Certainty.

Group A's Common Documentation Package includes two jurisdictions, Party M and Party N, in which the Group claims entitlement to relief for the elimination of double taxation. However, the tax administration in Party M has identified some possible errors in the Group's application of rules to allocate the obligation to provide relief between Affected Parties. The Competent Authority of Party M contacts the Competent Authority of Party N, who agrees to participate in a coordinated review. The Parties inform the Coordinating Entity via the Lead Tax Administration that a coordinated review will be undertaken and invites it to submit a request for a Comprehensive Certainty Review within [30 days]. The Coordinating Entity confirms that it does not intend to request such certainty.

Party M and Party N undertake a review of Group A's Common Documentation Package and agree a number of changes to correct the allocation of the elimination of double taxation, which reduce the relief due in Party N, slightly increase the relief due in Party M and also introduce a small amount of relief due in another Affected Party, Party O. The Competent Authority of Party M contacts the Competent Authority of Party O, which reviews the amended calculations and agrees they are correct. Party M, Party N and Party O inform the Coordinating Entity of this outcome, via the Lead Tax Administration.

Example 2

The Coordinating Entity of Group B, a Covered Group, submits its Common Documentation Package for the Period 20X1 with its Lead Tax Administration, which is exchanged with the Competent Authorities of Affected Parties. The Coordinating Entity does not make a request for Comprehensive Certainty.

The tax administration of Party P, an Affected Party, identifies a number of possible errors in the application of the Convention contained in the Common Documentation Package and exchanges this information with the Lead Tax Administration, proposing a coordinated review by Affected Parties. The Lead Tax Administration agrees that the Common Documentation Package appears to contain a number of errors and that a coordinated review should be undertaken.³¹ The Lead Tax Administration informs the Coordinating Entity that a coordinated review will be undertaken by Affected Parties and invites it to submit a request for a Comprehensive Certainty Review within [30 days]. The Coordinating Entity confirms that it does not intend to request such certainty. The Lead Tax Administration notifies Affected Parties of the review. Of these Affected Parties, 75% confirm that they would participate in a coordinated review of the Group's Common Documentation Package, whereas 25% do not wish to participate as they either do not agree that there are errors, or any adjustment would not be material in their jurisdiction.

The Lead Tax Administration and participating Affected Parties agree that in this case the review shall be undertaken by a panel comprising the Lead Tax Administration and six tax administrations of participating Affected Parties chosen at random. This panel undertakes a review of the Group's Common Documentation Package, taking

³¹ Note, that, as in Example 1, the agreement of the Lead Tax Administration that the Common Documentation Package appears to contain a number of errors and that a coordinated review should be undertaken is not needed in order for Affected Parties to undertake such a review.

into account comments submitted by other participating Affected Parties. As a result of this review the panel agrees that much of the Group's application of the Convention should be agreed as filed, but identifies a small number of changes that should be required. The outcomes of this review are shared with participating Affected Parties. Where there are disagreements, further discussion is undertaken to seek to resolve these. To the extent participating Affected Parties reach agreement, this outcome will be implemented consistently. The final outcome, including any unresolved disagreements are shared with other Affected Parties for information. The Lead Tax Administration also shares details of the outcome with the Coordinating Entity of Group B.

10.A support function for the Tax Certainty Framework

1. A dedicated Tax Certainty Secretariat shall be established to provide administrative and clerical support to the Parties during the various aspects of the Tax Certainty Framework described in this Part, and other related functions. The Tax Certainty Secretariat shall initially be located in [to be agreed] and may comprise Officials that are [status to be agreed].

2. Activities to be undertaken by a Tax Certainty Secretariat shall be agreed by the Parties, but may include:

- (a) coordinating the establishment of structural aspects of the Tax Certainty Framework, including Screening Committees,
- (b) coordinating processes for the approval of eligible pool members to serve on Determination Panels,
- (c) supporting a Lead Tax Administration in establishing a Review Panel and Advisory Group as needed,
- (d) coordinating the establishment of Determination Panels as needed, including the identification of a Chair, and
- (e) supporting a Lead Tax Administration, Chair of an Advisory Group and Chair of a Determination Panel in organising meetings as needed.

3. As the Tax Certainty Secretariat is not Party to the Convention, general measures shall be put in place to ensure the confidentiality of information provided by Groups and exchanged by Parties for the purposes of the Tax Certainty Framework. This may include, for example, the use of standardised Group Identifiers to ensure the identity of a Group requesting certainty is not disclosed.

4. Where required, an Official of the Secretariat may be contracted by the Affected Parties to act as Clerk to the Chair of a Determination Panel, to provide support including:

- (a) coordinating discussions with members of the Determination Panel,
- (b) organising requests for clarifications via the Lead Tax Administration,
- (c) applying the mechanical approach on behalf of the Chair to identify the chosen alternative outcome in cases where ranked voting is used to choose between multiple alternative outcomes and the Chair has invited Panel Members to rank their preferences, and
- (d) recording the outcomes of discussions in order to facilitate the Determination Panel's work.

In this case, specific confidentiality arrangements would apply in place of the general measures described in paragraph 3.

5. The Tax Certainty Framework, including the Tax Certainty Secretariat, shall be funded by [annual fees payable by Parties / fees payable by Groups making a request for certainty [to be agreed]].

11. Definitions

1. For the purposes of this note, the terms:
 - (a) “Advance Certainty” means certainty provided by Affected Parties to a Covered Group with respect to aspects of the Convention listed in Section 2, requested before the start of the Period to which the certainty relates;
 - (b) “Advance Certainty Documentation Package” means means a package of documents and information to reflect a Covered Group’s proposed approach to one or more of the aspects of the Convention listed in Section 2, which corresponds with the format and content in [to be agreed]; ;
 - (c) “Advance Certainty Outcome” means an agreed outcome of an Advance Certainty Review which is binding on Affected Parties for a specified period subject to there being no Relevant Change;
 - (d) “Advance Certainty Review” means a review undertaken by a Review Panel on behalf of Affected Parties to determine whether one or more proposed approaches contained in a Group’s Advance Certainty Documentation Package reflect a correct application of the Convention;
 - (e) “Affected Party”, with respect to a Group for a Period, means:
 - i) a Party whose tax administration is the Lead Tax Administration;
 - ii) a Party
 - i. in which the Group has Revenues, not including Excluded Revenues, that meet the Nexus threshold test, or
 - ii. that is required to provide relief for the Elimination of Double Taxation, for the Period
 on the basis of information contained in the Common Documentation Package; or
 - iii) a Party that has notified the Lead Tax Administration asserting that it considers itself to be a Party in which the Group has Revenues, not including Excluded Revenues, that meet the Nexus threshold test accompanied by relevant supporting documentation sufficient to demonstrate a reasonable basis for this view.

The status of an Affected Party as such shall not by itself be relevant to the determination of whether that Party may tax profits of a Group pursuant to the Convention.
 - (f) For the purposes of paragraph 1(e)(iii), relevant supporting documentation includes:
 - i) documentation confirming that the Group has a Group Entity resident in or located in the Party, or
 - ii) documentation confirming that the Group has or is likely to have Revenues that are not Excluded Revenues in the Party above the applicable Nexus threshold, which may include but is not limited to:
 - i. in cases where the assertion relates to revenues from finished goods, online intermediation of tangible goods, or intangible property related to finished goods: evidence of

- expenditure on finished goods delivered in the location of the Party, customs documentation, Value Added Tax or Sales Tax documentation demonstrating the delivery of the goods in the location of the Party, or tax documentation relating to the activities and revenue of the Group's independent distributor earned in the location of the Party;
- ii. in cases where the assertion relates to revenues from resellers of services: evidence of expenditure on the service used in or by a user located in the location of the Party, or projected revenue based on the relevant allocation key, though this shall only be taken as sufficient to demonstrate a reasonable basis that the Group has Revenues, not including Excluded Revenues, that meet the Nexus threshold test in a Party if, based on information contained in its Common Documentation Package, the Group is using the allocation key for the purposes of sourcing revenues;
 - iii. in cases where the assertion relates to revenues from components, B2B services, or intangible property: projected revenue based on the relevant allocation key, though this shall only be taken as sufficient to demonstrate a reasonable basis that the Group has Revenues, not including Excluded Revenues, that meet the Nexus threshold test in a Party if, based on information contained in its Common Documentation Package, the Group is using the allocation key for the purposes of sourcing revenues;
 - iv. in cases where the assertion relates to revenues from physical services (location-specific services, non-online advertising services, online intermediation of offline services, transport services, intangible property supporting such physical services): tax documentation, or business licensing information or regulatory information demonstrating the performance of the physical service in the jurisdiction of the Party;
 - v. in cases where the assertion relates to revenues from digital businesses (online advertising services, user data, digital goods, online intermediation of digital goods or digital services, digital business to consumer services): evidence of expenditure by business customers on advertising or purchase of user data targeted at end users located in the Party, or quantitative evidence of consumer purchasing habits of consumers located in the Party related to the digital business;
 - vi. in cases where the assertion relates to revenues from B2B services: evidence of expenditure or transactions monitored through foreign exchange controls made by business customers in the location of the Party;
 - vii. in cases where the assertion relates to revenues from real property: legal, regulatory or physical evidence of the location of the real property in the Party;

- viii. in cases where the assertion relates to revenues from government grants: evidence of the contribution of the Party to government grants;
 - ix. [in cases relating to a Transitional Period: [to be agreed]]; or
 - x. [additional text to be added]
- (g) “Authorised Representative” means an individual authorised to represent a Group Entity for purposes of its tax matters;
- (h) “Common Documentation Package” means a package of documents and information to reflect in detail the application of the Convention to a Group for a Period, which corresponds with the format and content in [to be agreed];
- (i) “Competent Authority” means the ministry or governmental agency or institution designated by a Contracting Jurisdiction as responsible for the administration of the provisions of the Convention;
- (j) “Comprehensive Certainty” means certainty provided by Affected Parties to a Covered Group with respect to all aspects of the Convention for a Period that is ended, other than those covered by an Advance Certainty Outcome;
- (k) “Comprehensive Certainty Outcome” means an agreed outcome of a Comprehensive Certainty Review which shall be implemented by Affected Parties subject to the provisions of Section 8;
- (l) “Comprehensive Certainty Review” means a certainty review undertaken by a Review Panel or Lead Tax Administration on behalf of Affected Parties to determine whether the Common Documentation Package filed by the Coordinating Entity reflects a correct application of all relevant aspects of the Convention to the Group in all Parties;
- (m) “Coordinating Entity” means:
- i) the Group Entity that is designated by the Group to file the Group’s Scope Certainty Documentation Package, Follow-Up Scope Certainty Documentation Package, Common Documentation Package or Advance Certainty Documentation Package and undertake activities described in this note on behalf of Group Entities, or
 - ii) where no designation is made, the Ultimate Parent Entity of the Group;
- (n) “Determination Panel” means a panel created to resolve disagreements arising from a review of the application of the Convention by a Group for a Period under the approaches described in Section 1, Section 3 or Section 4, as under Section 5;
- (o) “Family Member” means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, uncle, aunt, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law (including adoptive relationships) of an individual or any person sharing an individual’s household (other than a tenant or employee).

- (p) “Lead Tax Administration” means the tax administration of a Party determined by the sub-paragraphs below.
- i) Subject to the provisions of this paragraph, the Lead Tax Administration is the tax administration of the Party in which the Ultimate Parent Entity of a Group is resident for tax purposes. If the Ultimate Parent Entity of a Group is transparent for tax purposes in the Party where it is organised, it shall be treated for the purposes of this Section as resident in that Party.
 - ii) Notwithstanding sub-paragraph i), where a Group has a significant connection to another Party, the Group, the tax administration mentioned in sub-paragraph i) and the tax administration of the other Party may agree that the tax administration of the other Party is the Lead Tax Administration. Typically, such a discussion shall be initiated by either the Group or the tax administration mentioned in sub-paragraph i). If no such agreement is reached, the Lead Tax Administration shall be that identified in sub-paragraph i). For the purposes of this Section, a Group has a significant connection to:
 - i. the Party in which the Group had the highest average unrelated party revenue in the Period and the [to be added] preceding Periods,
 - ii. the Party in which the Group had the highest average tangible fixed assets in the Period and the [to be added] preceding Periods,
 - iii. the Party in which the Group had the highest average number of employees located in the Period and the [to be added] preceding Periods, or
 - iv. the Party whose tax administration was most recently the Lead Tax Administration of the Group.
 - iii) If the Ultimate Parent Entity of a Group is resident for tax purposes in a tax jurisdiction that is not a Party, which has not introduced rules in accordance with the Convention, or which does not have a tax administration, the Lead Tax Administration is the tax administration in the Party in which the Group had the highest average [number of employees] in the Period and the [to be added] preceding Periods. Notwithstanding this, where a Group has a significant connection to another Party, the Group, this tax administration, and the tax administration of the other Party may agree that the tax administration in the other Party is the Lead Tax Administration. Typically, such a discussion shall be initiated by either the Group or the tax administration mentioned first in this sub-paragraph.
 - iv) If the Ultimate Parent Entity of a Group is resident for tax purposes in two tax jurisdictions, the tax jurisdiction of residence shall be determined in accordance with the applicable tax treaty. Where the applicable tax treaty provides that the determination of residence is based on a determination by the Competent Authorities of the relevant tax jurisdictions, and no such determination has been made, where the applicable tax treaty does not provide that such a

Group shall be treated as resident in just one of the Contracting State for purpose of its claiming benefits provided by the Convention, or where no applicable tax treaty exists:

- i. if both tax jurisdictions are Parties and have rules for taxation in accordance the Convention, the Competent Authorities of the two Parties shall mutually agree which should be treated as the tax jurisdiction of residence for the purposes of applying sub-paragraph i),
 - ii. if only one of the two tax jurisdictions is a Party that has rules for taxation in accordance with the Convention, sub-paragraph i) applies as if the Ultimate Parent Entity of the Group is resident in that tax jurisdiction only, and
 - iii. if neither of the two tax jurisdictions is a Party that has rules for taxation in accordance with the Convention, sub-paragraph iii) applies.
- v) Parties to the Convention may agree circumstances in which other tax administrations may be the Lead Tax Administration.
- (q) “Follow-Up Scope Certainty” means certainty provided by Listed Parties to a Group which has been found not to be a Covered Group for an earlier Period, that the likelihood it is a Covered Group for a later Period is low and no further action shall be taken;
- (r) “Follow-Up Scope Certainty Review” ma Party eans a certainty review undertaken by the Lead Tax Administration;
- (s) “Follow-Up Scope Certainty Documentation Package” means a package of documents and information to reflect changes relevant to whether a Group is a Covered Group since the Group was subject to a Scope Certainty Review, which corresponds with the format and content in [to be agreed] ;
- (t) “Listed Parties” means Parties:
 - i) included on a list provided by the Coordinating Entity of a Group and from which Scope Certainty or Follow-Up Scope Certainty is requested under Section 1, including a Party added to the list following a proposal from that Party under the process in paragraph 5 of that Section, and
 - ii) Parties required to be included on the list in (i) by the Lead Tax Administration;
- (u) “Review Panel” means the panel constituted to review a Covered Group’s request for Comprehensive Certainty or Advance Certainty as described in Section 3;
- (v) “Scope Certainty” means certainty provided by Listed Parties to a Group that it is not a Covered Group for a particular Period;
- (w) “Scope Certainty Documentation Package” means a package of documents and information to reflect the application of provisions of the Convention concerning whether an Group is a Covered Group for a Period, which corresponds with the format and content in [to be agreed];

- (x) “Scope Certainty Outcome” means an agreed outcome of a Scope Certainty Review;
- (y) “Scope Certainty Review” means a certainty review undertaken by a Scope Review Panel or Lead Tax Administration on behalf of Listed Parties to determine whether a Group is a Covered Group for a particular Period;
- (z) “Scope Review Panel” means the panel constituted to review a Group’s request for Scope Certainty as to whether it is a Covered Group, described in Section 1.
- (aa) “Significant Investor” means an individual who, individually or through an entity owned or controlled by the individual, holds capital having present value in excess of EUR [X].
- (bb) “Significant Business Dealings” means a business transaction or a series of transactions that, during any one fiscal year, exceed the lesser of EUR [X] or [X] percent of a Group’s total operating expenses.

