

August 19, 2022

Tax Treaties, Transfer Pricing and Financial Transactions Division
Centre for Tax Policy and Administration
Organisation for Economic Co-operation and Development
By email to tfde@oecd.org

Re: Business Roundtable comments on OECD public consultation, “Progress Report on Amount A of Pillar One”

Dear Sir/Madam,

Business Roundtable welcomes the OECD’s commitment to working multilaterally and with the private sector to ensure sound tax policies and straightforward tax administration, which are essential to protecting investment and economic growth.

On behalf of more than 200 chief executive officers of America's leading companies, Business Roundtable is pleased to submit comments in response to the OECD’s public consultation of July 11 to August 19, 2022 on the Progress Report on Amount A of Pillar One (the “Progress Report”).

Overview

We appreciate the opportunity to review and comment on the Amount A rules in the Progress Report. Recognizing that the Progress Report was drafted by the OECD Secretariat and has not been agreed to by the Inclusive Framework (IF), we hope that the comments received on the Progress Report will be taken into account in a subsequent draft of the Amount A rules, and that the next draft will be published as a public consultation document together with proposed rules on a streamlined administrative process and on the tax certainty mechanisms for Amount A and related issues.

Overall, we believe that the Amount A rules need significant further development in a number of important areas, and it is necessary that some key aspects – such as the elimination of double taxation, the treatment of withholding taxes and the functioning of the marketing and distribution safe harbor (“MDSH”) – are properly addressed in order to provide a comprehensive analysis.

In our view, the only way that the Pillar One, Amount A project can be successful is to focus on streamlining and simplifying the application of the new rules in a simple, clear, user-friendly, way and based solidly on core principles such as non-discrimination and the avoidance of double taxation.

We are concerned that the Amount A rules in the Progress Report do not appear to be driven by a principle other than that countries want more revenue. We believe that the burden of the rules on both tax administrations and taxpayers would significantly outweigh any benefit. The rules must be principled, simpler and manageable for both taxpayers and tax administrations. In this regard, we note that some countries in the Inclusive Framework have already been publicly expressing their dissatisfaction with the envisaged new Amount A rules.¹

To the extent that the goal of the Amount A rules is to bring certainty and stability to the international tax system, we are not convinced that the rules, as reflected in the Progress Report and in the earlier OECD public consultation documents on tax certainty mechanisms, would actually reduce the number of tax disputes. Lengthy new tax laws and treaty provisions, with numerous newly defined terms and unclear processes, will inevitably give rise to issues of interpretation that will not be resolved quickly or easily. Moreover, the political nature of the two-pillar project that includes Pillar One makes it certain that, even if a full set of Amount A rules are agreed upon by the Inclusive Framework in 2023, those rules will come under pressure in succeeding years as governments change in IF member countries and new policymakers bring new approaches to the taxation of cross-border business. Only a solid policy grounding, clear rules, and a simple, clear, and efficient system will stand any chance of success in the longer term.

In that light, we note with approval that the Progress Report states that the Multilateral Convention (MLC) will contain provisions requiring the withdrawal of all existing digital service taxes (DSTs) and relevant similar measures with respect to all companies and will include a definitive list of these existing measures. Pillar One is not worthwhile unless the IF can reach genuine agreement on this, along with meaningful tax certainty. Regarding the possibility of new, future unilateral measures, the MLC must contain provisions that prevent the creation of new taxes that appear permissible in form but have impermissible effects. Relevant similar measures should include any tax measures that are discriminatory by industry or act as a trade barrier, favoring local competitors over other sellers who would be disproportionately subject to these taxes.

Separately, we note with great concern the Progress Report's indication that IF members are not in agreement regarding the effect of withholding taxes on relevant Amount A rules such as the Marketing and Distribution Profits Safe Harbour (MDSH) and the rules on elimination of

¹ See, for instance, the case of Colombia's proposed tax reform disclosed on August 8th which, in justifying the introduction of unilateral measures such as the notion of "significant economic presence", refer to the lack of proper simplicity and effectiveness of the proposed reallocation of taxing rights under Pillar One.

double taxation. Although withholding taxes are not considered relevant unilateral measures that would be withdrawn under the MLC, the overlap in taxation of residual profit between withholding taxes and Amount A needs to be resolved through adjustments to Amount A. Allowing taxation of residual profits through withholding taxes without any Amount A effects would act as a backdoor around the rules and objectives of Pillar One, and would undermine the certainty provided by addressing taxation of residual profits through Amount A.

Equally disturbing is the suggestion in the Progress Report that the MDSH adjustment might provide less than full relief from double taxation of an MNE's Amount A allocation to a given country. This would be contrary to the purpose of the MDSH as stated in the Progress Report itself. The proposed MDSH design is discussed in more detail below.

In addition, as discussed further below, the revised revenue sourcing proposals in the Progress Report present many of the same problems as the initial draft of proposals issued in February of this year. Transition relief alone is not enough. Without workable rules for the sourcing of revenue, the Amount A reallocation mechanism will not function in practice or be durable over time.

Because our membership includes regulated financial services providers of different types, we do not have a single, uniform view regarding the proposed RFS exclusion as described in the Progress Report. The deposit-taking institutions and credit institutions strongly support the proposed exclusion as drafted. However, others among our membership have certain concerns which are reflected in the comments below.

Specific Comments

Scope and segmentation

We have several comments regarding scope and segmentation. First, the rules need to consider complications that arise when the Amount A rules are applied to a Covered Segment as opposed to a Covered Group:

- While the rules for Covered Groups include loss carry-forwards, there is a need for specific loss carry-forward rules when there is a Covered Segment. For example, segments not in scope for a year may have significant losses (greater than that of the whole MNE) when only a Covered Segment is in-scope.
- MDSH and double taxation rules are more complex when there is a Covered Segment. An MNE will likely have entities that fully support the Covered Segment, entities that do not support the Covered Segment at all, and entities that support the Covered Segment as well as segment(s) not in-scope. There needs to be simplification of the rules for Covered Segments under Amount A, otherwise the compliance burden will be significant for MNEs with a Covered Segment.
- There needs to be clarity on what happens when an MNE shifts from having a Covered Segment to being a Covered Group as well as what happens if the Covered Group falls out of scope thereafter. It is quite possible that a group could be subject to

segmentation, have an increase in its profit margin above 10% to subject the entire group to Amount A, but then have a subsequent decrease in profitability back below 10%. These sorts of situations create immense complexity and the rules do not adequately provide guidance on how to handle them.

Second as a simplifying measure, groups whose segments are all in scope should be able to elect to apply the Amount A rules on an aggregated basis. If all segments are in scope, a group should not be required to incur the cost of undertaking separate computations and compliance for each segment. Paragraph 8 on page 12 of the Progress Report, which requires separate compliance for each segment, should be deleted.

We support the expressed objective of minimizing the need for segmentation to increase simplification in the application of the Amount A rules. Segmentation, expense allocation, and loss relief rules must be drafted in a manner that does not result in competitive distortions in the marketplace.

Nexus thresholds

The EUR 1 million and EUR 250,000 nexus thresholds are too low. The compliance and administration costs with respect to jurisdictions at those levels would not be justified by the very small amount of Amount A revenue that would result. The thresholds should be substantially increased to a level which is meaningful from an economic standpoint to tax administrations.

Revenue sourcing rules

BRT believes revenue sourcing is foundational to the durability of Amount A. As drafted, we believe the revised revenue sourcing rules in the Progress Report are unworkable. We have several comments on the revenue sourcing rules.

First, it is not clear what is meant in Article 4, paragraph 2 by the statement that “Revenues must be sourced in a manner that accounts for differences among Jurisdictions in the goods, content, property, products and services sold, licensed or otherwise alienated and provided by the Covered Group, their quantities and their prices.” This same language appears in paragraph 9.d.ii of Section 2 of Schedule E: Detailed Revenue Sourcing Rules in relation to systems design in a group’s internal control framework. Clarification of what is intended by this wording would be helpful.

Considering paragraph 2 along with paragraph 4 of Article 4, which requires the sourcing of “all Revenues ... using a Reliable Method based on the Covered Group’s specific facts and circumstances”, and paragraphs 5 through 11 of Article 4, all of which arguably refer to individual transactions either explicitly or implicitly, it appears that transaction-by-transaction revenue sourcing may still be required in substance, despite the fact that it is no longer

explicitly stated in the rules. This would be overly burdensome and inconsistent with commercial systems and documentation. We are hopeful that the intention of the IF is not to require transaction-by-transaction data to support revenue sourcing for Amount A purposes, and we would welcome clarification of this in the next iteration of the rules.

Regarding paragraph 12 of Article 4, we believe that Non-customer Revenues should be excluded from the Amount A calculation, since the purpose of Amount A is limited to reallocating residual profits from sales to customers in market jurisdictions. Thus, paragraph 12 should be deleted, and the definition of “Revenues” in paragraph 14 on page 24 should be revised to exclude Non-customer Revenues.

Regarding paragraph 13 of Article 4, we note with approval that transition relief would be available for three years in addition to a three-year soft landing to implement systems to comply with Amount A. We suggest, however, that a group should be able to elect to use the allocation key that is most appropriate, given the facts and circumstances of their particular business.

Turning to the detailed revenue sourcing rules in Schedule E, we have the following comments:

It would be helpful to provide examples that address practical approaches to applying the revenue sourcing rules. Since different companies will have a variety of different types of data that they collect, some examples of how to use data and make appropriate adjustments for gaps in data would be highly instructive.

More clarity is required on what is meant in the definition of Alternative Reliable Indicator, which refers to alternatives that are "consistent" with revenue sourcing rules. Clearly, alternatives would not necessarily arrive at exactly the same result, but could still achieve the same general purpose. How much variation would be permissible is unclear.

Requiring taxpayers to base calculations on data from third-parties (i.e., customers, resellers, and distributors) would present significant challenges, since this data is unlikely to be available or shared by third parties. The confidential nature of the data could reveal trade secrets or competitive information and therefore will be closely held.

It would be very helpful for the rules to provide some guidelines to reinforce the idea that the objective is for taxpayers to use reasonably available data or data collected in the normal course of business, so that companies do not have the impression that extraordinarily expensive systems overhauls or diversion of engineering resources are expected. This is particularly the case where data that is directionally similar is already reasonably available.

It is helpful that data used for other regulatory or legal purposes can also be used for revenue sourcing. It would be good to clarify that there would be flexibility in this regard, so that, for example, taxpayers could use data used to comply with other tax laws as well.

The expectations for the Internal Control Framework should be further clarified. In particular, it would be important to understand how the Review Panels intend to review this framework. It would be impractical for there to be separate systems audits. Therefore, we recommend the Review Panels rely on work by the company's statutory auditors. The framework could include details on what data the systems track, and how the data is pulled (i.e., procedures), but a separate audit of the systems seems well beyond the scope of Pillar One.

Revenue from sales of Finished Goods via an independent distributor is sourced in the first instance to the place of delivery to the Final Customer. In our view, this is simply unworkable. The rule goes on to provide that the revenue could be sourced to the Location of the Independent Distributor, provided that it is contractually restricted to selling in that Location or that it is otherwise reasonable to conclude that it is located in the same Jurisdiction as the place of the delivery of the Finished Goods to the Final Customer. In our view, it is not appropriate for tax rules to distort contractual terms by, for example, incentivizing the inclusion of geographic limitations in contracts with distributors.

The sourcing rule for revenue from sales of Components is also unworkable, in our view. MNEs that sell components would find it extremely difficult to trace (1) the use of the components by unrelated parties in the production of finished goods, and (2) the place of delivery of the finished goods to final customers.

Large companies have many products and services, so there should be a materiality threshold for products that account for less than 5% of total revenues. The "Tail-End Revenues" concept in the Progress Report recognizes this in the context of a particular product/revenue type, but there should also be a threshold based on a company's total revenues. Revenue sourcing for any product below that threshold should have simplified sourcing rules (e.g., billing address or allocation keys) to avoid a disproportionate amount of compliance and audit work in relation to immaterial revenue amounts.

It would be helpful to clarify that all revenues from cloud services are considered "Revenues from Other Services" and to specify how other services provided by distributors are treated, since the Progress Report only references the treatment of resellers. We are concerned about the possibility of very burdensome diligence required to apply the "Knock-Out Rule". This should be elective, not mandated, for cases where companies would have clear visibility that, for example, they sell no products in a particular country.

The definition of "Reasonable Steps" on page 77 of the Progress Report states that the term does not include changing contractual terms. We agree, but this seems somewhat inconsistent with the provision of transition relief so taxpayers can have time to implement costly system changes. To provide more clarity, the rules should make it clear that taxpayers are not required to renegotiate contracts to be in compliance or to apply the rules in practice.

For "Other Services," there remains a distinction for "Large Customer." While contractual obligations to provide information are no longer required, other requirements remain that look

to “information on the place of use of the service reported” or “commercial documentation.” We are concerned that the rules are still quite complex.

Under the three-year transition period, there would be a use of an allocation key which for other services would be the headcount allocation key. For large customers this would require determining who the ultimate parent entity is and then applying data from CbyC statistics – this is a very manual process and there still could be issues in properly identifying who the parent entity is, which accounts are linked, etc. To minimize confusion regarding the snapshot in time to determine whether a customer is a Large Customer, we recommend identifying large customers by account (not by UPE) in the year before the year in question.

We appreciate the changes here to simply the large customer rule, but we are concerned about edge cases where we are unable to gather all the necessary data. We suggest the inclusion of a fallback rule in cases the companies are not able to collect the necessary information.

After the three-year transition period, companies may still need to use the allocation key or come up with a “reliable” method for place of use. We know VAT data may not be available to use, but companies are limited to other data that they have. We suggest allowing VAT indicators to be used as a reliable indicator if other prescribed steps are exhausted.

More clarity is needed with respect to the definition of “Large Customer”. One part of the definition refers to Customers but the other refers to a “person” which is not a defined term. It is not clear whether the definition could cover a large reseller or distributor.

It is not practical to expect companies to track whether public data is available on headcount for Large Customers. The sourcing approach under Section 12, paragraph 35(c) in Schedule E should be available for all cases where other methods have not been agreed with the Review Panels.

We are encouraged that the OECD has further developed the concept of the Initial Transition Period, which will be a very important part of an effective certainty process. However, we believe that it would be better for the period to be seven years rather than only three years after the MLC takes effect, as this would align with the timing of the expansion of Amount A to cover groups with total revenue of at least EUR 10 billion.

Determination and allocation of taxable profit

The stated goal of Amount A is to ensure that excess returns are allocated in part to market countries, but the rules in the Progress Report fail to account for profit shortfalls in previous years. For example, an MNE with pre-tax margin of 5% in year 1 and 15% in year 2 would lead to a 10% average normal return over two years and yet result in Amount A allocations to market jurisdictions in year 2. This necessarily shortchanges the entrepreneur’s country of its normal return tax base. The justification for not including profit shortfalls has not been articulated in previous consultations or in the Progress Report.

The MDSH in the Progress Report would almost certainly result in double counting of taxable profits in a jurisdiction, and thus double taxation, in many cases, due to several factors. First, the formula in Article 6, paragraph 5 implies that there will be a haircut on the MDSH adjustment, represented by Y which is defined as the offset percentage. Using any percentage other than 100% will result in double taxation.

Second, using the higher of two levels of return on depreciation and payroll (RODP)—namely, the groups' elimination threshold RODP or a 40% RODP—to calculate the portion of elimination profit (PEP) in the MDSH formula means that the MDSH will provide no relief in cases where a group's actual routine return in a jurisdiction is less than a 40% RODP. This will result in double taxation as well.

Third, by limiting the calculation of residual profit to RODP, the MDSH formula ignores the reality of how many MNEs do business. Depreciation and payroll expense are antiquated in that, in today's world, intangible assets are key elements in an MNE's value chain. At the very least the MDSH formula should incorporate amortization of intangibles in the formula in addition to depreciation of tangible assets and payroll expense. In addition, companies that outsource aspects of their supply chain (whether manufacturing or elements of R&D) may see vastly different outcomes in the measurement of the MDSH, even where the same facts apply in the market countries.

There is a need for additional detail on costs included in depreciation and payroll for the RODP computation. The definition of Eligible Assets for depreciation is tied to property, plant, and equipment ("PPE") but does not include property that is held for sale, lease or investment.

We note that the definition of Eligible Payroll Costs focuses on compensation expenditures (including salaries, wages, and other expenditures that provide a direct and separate personal benefit to an Eligible Employee, such as health insurance, pension contributions and stock-based compensation), payroll and employment taxes, employer social security contributions, and payments in respect of services provided by independent contractors. Given that stock-based compensation may not be recorded by a local entity under financial accounting standards, clarification would be helpful as to whether stock-based compensation "expenditures" attach to the entity that employs the Eligible Employee or another entity in which the cost is booked for financial statement purposes. If the latter, would the stock-based compensation expense for employees employed in other entities still be considered for the RODP base by the entity that reflects such expense on its financial statements?

The MDSH is an essential part of the Amount A rules and a key to achieving the objective of stabilizing the international tax system, since it is meant to ensure that residual profit is not subject to double or multiple taxation. As stated in the Overview section of the Progress Report, "The [MDSH] adjusts the allocation of Amount A for market jurisdictions that already have existing taxing rights over the Group's residual profits." It is beyond dispute that a country should not be able to receive an allocation of residual profits under Amount A, and separately

subject the same taxpayer's residual profits to double taxation through aggressive transfer pricing adjustments.

To achieve the objective of the MDSH, its design must have some connection to transfer pricing principles, which are the basis for allocation of profits to marketing and distribution functions. Deviation from the arm's length principle in determining routine and residual returns will inevitably result in double taxation when taxable income is being imposed both under a jurisdiction's normal tax rules and under the Amount A rules.

The MDSH design in the Progress Report is not connected in any discernible way with transfer pricing or other relevant economic principles. As such, it is very difficult to see how the MDSH guardrail will achieve any real and meaningful stabilization of the audit environment. This approach to MDSH does not seem fit for its intended purpose.

The only reasonable amount for the offset percentage ("Y") is 100%. Anything less will embed double taxation into the international tax system. While there may be outlier scenarios in which a lower percentage may seem to be appropriate, anything under 100% would not be appropriate as a general rule. If in fact there is a justification (which is not apparent) for a lower offset percentage in special circumstances, it should only be applied in those appropriate unique circumstances.

The MDSH should be redesigned, based on a reasonable return on sales for marketing and distribution functions that is backed by public third-party data. While that may be a somewhat imprecise measure to apply to all companies, it would still be far more reasonable and stabilizing than the current proposal, since it addresses the residual / routine profit allocation within the system that is predominantly used currently by companies and auditors to allocate profit for these functions.

Some of our member companies believe that a return on sales (ROS) of 2.5% would be a reasonable fixed return that could be used as a replacement for the proposed approach in the Progress Report, on the basis that an ROS of 2.5% is supported by existing analysis of third-party data.² Other member companies believe that an ROS of 2.5% is too high for low-margin businesses.

² See, e.g., KPMG, Transfer Pricing Analysis of Arm's Length Return to Sales, Marketing & Distribution Activities (Feb. 2020), available at https://www.wu.ac.at/fileadmin/wu/d/i/taxlaw/institute/WU_Global_Tax_Policy_Center/KPMG_-_Amount_B_Econ_Analysis_-_full_report.pdf

Alternatively, many of our members believe the Amount A allocated to market jurisdictions should be capped such that any market jurisdiction can tax no more than 25% of global system profit attributable to that jurisdiction. By setting the MDSH cap at no more than 25% of global system profit, market jurisdictions would receive a more than sufficient amount of profit over which to exercise their taxing rights, and it would increase stability in the international tax system since an ultimate cap on Amount A does not prevent taxpayers (or tax authorities) from using traditional transfer pricing methodologies to leave (or negotiate for) more profits than contemplated by the cap in a local jurisdiction.

A cap would place a concrete guidepost as to the maximum Amount A allocation that is known to both taxpayers and tax authorities, thereby increasing stability in the international tax system. A cap also would remove the potential interplay with Amount B, a particular concern of developing countries. The potential for interplay of the MDSH with Amount B is a well-known concern of some countries. The Progress Report, through the RODP, establishes a potential benchmark of a routine return at a 10% return on sales (converted through the RODP). And while the RODP is not meant to replicate an arm's length return, it does represent a fixed return for in-country routine activities. At the same time, the Blueprint defines Amount B as a fixed return for certain baseline marketing and distribution activities taking place physically in a market jurisdiction, in line with the arm's length principle. Though the MDSH and Amount B are clearly not meant to be the same, with the delay of agreement on Amount B, many developing countries have already seized this argument and expressed their view that the MDSH fixed return should not deviate from Amount B. Setting the MDSH cap at no more than 25% of global system profit would further distinguish these two separate concepts.

It is unfortunate that Amount B has not been detailed further and was not included in the Progress Report. While we believe that the MDSH should be revised with connection to the arm's length principle, if that is not accomplished, it will be essential to have an appropriately designed Amount B to fill that void and achieve this purpose.

Amount B should be immediately available as a safeguard for all companies subject to Amount A once Pillar 1 is effective. This includes all Amount A taxpayers, regardless of industry.

If more time is needed to perfect Amount B, that does not preclude a more general approach to Amount B that could be refined over time, and that would be consistent with the entire Pillar 1 project, in any case, since Pillar 1 in so many areas seeks to standardize calculations, rather than have a highly customized approach for each taxpayer.

Footnote 3 is alarming. It would seem that, even after designing an MDSH that allows tax authorities to use the higher of two factors to justify their existing transfer pricing adjustments, the OECD Secretariat and/or the IF is considering yet another factor. This gives the impression that the MDSH is being designed not to achieve stability and avoid double taxation, but rather as a menu of justifications, one of which will be likely to support current audit practices in a jurisdiction, so that no real guardrails against double taxation are created.

Elimination of double taxation with respect to Amount A

We also have several comments under this heading. First, the requirement to include all jurisdictions with Elimination Profit of at least EUR 50 million would create additional compliance burden and unneeded complexity. The elimination rules should be limited to those countries making up 95% of the group's total Elimination Profit. Including all others with Elimination Profit of at least EUR 50 million would add many more jurisdictions and complexity to the process, and is likely to result in insignificant revenue consequences.

Second, in our view the multi-step elimination calculation is overly complex, and therefore will be difficult to scale and administer.

Third, for the reasons noted above in relation to the MDSH, the RODP calculation should be revised to include amortization of intangibles.

Fourth, regarding footnote 5 on page 21 of the Progress Report, substantially more information is needed for stakeholders to respond to the issue of double taxation relief methods other than the credit and exemption methods. However, business generally supports the exemption method over the credit method.

Clarity is also requested regarding the reasoning for the proposed multiplier referenced in Article 6, paragraph 6 which states: "Where the Marketing and Distribution Profits Safe Harbour Adjustment is applied according to paragraph 5 in [Jurisdiction name], an amount equal to [the adjustment] or [a multiple of the adjustment] shall be deducted from the Elimination Profit of the Covered Group in [Jurisdiction name] for the same Period." Based on preliminary modeling, this proposed multiplier would not impact Amount A but could possibly impact tiering in certain situations.

Regarding the elimination tax base rules in Schedule I of the Progress Report, we note that Section 2, paragraph 3 provides for application of the arm's length principle. In our view, transfer pricing adjustments should be made by companies and countries following domestic legislation, and the elimination rules of Amount A should not have separate transfer pricing rules that could be applied, regardless of whether there are actual transfer pricing adjustments or whether the relevant countries even agree such adjustments are warranted. The rule stated in Section 2, paragraph 3 would create more uncertainty and increases the possibility for double taxation. Similarly, only actual transfer pricing adjustments by countries should be taken into account in the elimination calculations.

An explanation of footnote 12 on page 85 of the Progress Report would be helpful to assist stakeholders in understanding the issues involved in whether the elimination tax base should include "income that is subject to a measure that is an assertion of primary taxing rights that is not a corporate income tax or a withholding tax, such as a diverted profit tax."

Administration

Recognizing that the Progress Report does not contain provisions on this topic, we would like to take the opportunity to comment briefly on it nonetheless. It will be important to ensure administration and filing procedures are workable for tax administrations and taxpayers alike. Taxpayers should be able to confidentially file a single Amount A return with the Lead Tax Authority which should only share relevant portions on a confidential basis with market jurisdictions. Taxpayers should not be required to pay Amount A tax until the methodologies related to computing the tax have been agreed in an advance early certainty process. Taxpayers should not be required to register or open bank accounts in market jurisdictions solely for the purpose of Amount A compliance.

Definitions in the Progress Report

In our view, the structure and formatting of the Amount A rules in the Progress Report is far from ideal, resulting in a document that is extraordinarily difficult to navigate and understand. The definitions of many defined terms are hard to find. Substantially more work needs to be done on the way the Amount A rules are presented, in order to make it easier for readers to find the definitions of defined terms, and to work with the document more generally.

Extractives Exclusion

Please see our comments in the Appendix.

Regulated Financial Services Exclusion

1. Credit Institutions

We greatly appreciate the addition of “Credit Institutions” to the Regulated Financial Services exclusion. This properly acknowledges that not all regulated entities that are licensed to engage in lending activities are deposit-accepting banks.

However, to effectuate the purpose of including Credit Institutions in the Regulated Financial Services exclusion, we note that the regulatory requirements set forth in the definition of “Credit Institution” in the Progress Report need to be revised. Specifically, paragraph 3.b. in the definition currently requires a Credit Institution to be “subject to capital adequacy requirements that reflect the Core Principles for Effective Banking Supervision as provided by the Basel Committee on Banking Supervision.” The Basel regulatory principles were crafted for “traditional” banks that accept deposits from the public. Since Credit Institutions are not banks accepting deposits from the public to fund their lending operations, they may have a different business model that is generally less complex and presents less risk than deposit accepting banks. As a result, Credit Institutions are subject to similar regulatory capital adequacy standards, but not necessarily the exact Basel regulatory requirements. Accordingly, we request that paragraph 3.b. of the definition of Credit Institution be revised so that it reads as

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follows: “b. that is subject to capital adequacy requirements incorporating a risk-based measure; and.”

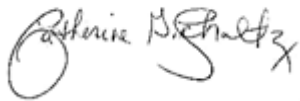
2. Electronic Payment Systems – revenue sourcing

Electronic Payment Services (EPS) networks facilitate business-to-business services of authorization, clearing, and settlement of retail payment transactions between Regulated Financial Institutions that are excluded from Pillar 1. “Issuing Institutions” have relationships with cardholders as customers and “Acquiring Institutions” have merchants as customers. EPS networks that are within the scope of Amount A should not be required to obtain information from their customers to implement the sourcing rules. Because all issuing and acquiring institutions are excluded from Pillar 1, regardless of the size, sourcing rules for EPS networks should generally follow the “smaller customer” rules provided in “Revenues from Other Services.”

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Business Roundtable urges the Inclusive Framework to take the above comments into account in its work on Amount A of Pillar One, in the interest of ensuring that the rules are administrable as well as consistent with relevant policy concerns. We appreciate your consideration of these comments. Please do not hesitate to contact us if you have any questions.

Yours sincerely,



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Appendix Business Roundtable Comments on Progress Report on Amount A of Pillar One:
Extractive Industries

Para	Issue		Comment
	Qualifying Extractives Group and “substantial connection”	This is a very loose standard at risk of widely different interpretation of what ‘substantial’ and ‘connection’ means. Primary Processing tends to be located near the customer location whereas geology dictates where minerals are located. Crude and natural gas extracted by one company may be sold or swapped with another company for Primary Processing based on market efficiencies. If this breaks the ‘connection’, then the exclusion will create an incentive for market disruption to maintain the ‘connection’.	Propose to drop this test as too hard to administer and to rely upon the other measures of the draft rules to separate out Non-Extractive Revenue from Extractive.
Section 2 Article 9	Disclosed Segment	Disclosed Segments rules apply to a Qualifying Extractives Group. The rules appear to apply as a matter of course, i.e. are not exceptional, and their application to the activities of an integrated extractives business is likely to lead to inappropriate results given that interdependencies exist along the entire value chain. It also adds an extra layer of compliance complexity for a Qualifying Extractive Group that must distinguish between Extractive and Non-Extractive activities.	The Disclosed Segment rules should not apply to a Qualifying Extractives Group because interdependencies exist between its different business segments. It would be inequitable to view the Disclosed Segments as separate and distinct businesses.
5	Revenue sourcing rules	We understand that the categories of Non- Extractive Revenues are: - Finished Goods sold to a Final Customer (directly by the Covered	We would appreciate clarification on which category of Revenues is

		Group/through Independent Distributor) - Revenues from Digital Content - Revenues from Components (place of delivery to a Final Customer of the Finished Goods into which the Component is incorporated) - Services Connected to Tangible Property - Services Performed at the Location of the Customer - Revenues from Real Property - Government Grants - Non-customer Revenues	applicable to Oil and Gas companies. Some challenges we foresee in applying the current Revenue categories:- (i) Finished Goods sold to a Final Customer (direct by the Covered Group/through Independent Distributor) - Most oil and gas transactions are B2B. Only a very small portion is sold directly to Final Customers or via distributors. (ii) Revenues from Components (place of delivery to a Final Customer of the Finished Goods into which the Component is incorporated) - Given the homogeneous nature of the commodities purchased and sold, and the fact that these commodities are resold multiple times between different oil and gas counterparts, before ultimately making their way into finished goods, it will be challenging to
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			identify the place of delivery to a Final Customer of the finished good. - Homogeneous commodities (steel, wood, plastics, wheat, cotton, etc) are purchased and resold multiple times and are the building blocks for a broad variety of products will not be sourceable using the preferred methods. Producers of these commodity products will have little choice but to use the GDP based Allocation Keys which is overbroad. For many of these products, the supply chain costs encourage consumption closer to the source of supply and not broadly across the world. Economics (gov't or trade groups) may be a better source of trade data on export flows (i.e. how much wheat did the USA export and to which markets) that would be much better than the GDP based Allocation Keys.
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20.14	Extractives Revenue	Whilst “Extractive Activity” includes “Qualifying Transportation,” “Extractives Revenue” cuts off the revenue to that from the Jurisdiction of Extraction. For integrated Oil & Gas and Energy companies, “Extractive Activities” includes transporting products often times, from the jurisdiction of extraction to another jurisdiction for “Primary Processing” of the products. Therefore, the definition of Extractive Revenue and restriction to that from the Jurisdiction of Extraction is not consistent with the way integrated multinationals operate and the intent of the definitions on “Qualifying Transportation,” “the sale of an extractive products” and “Primary Processing.” 20.14 also references “associated hedging gain and losses.” Note that these activities are typically carried out by the Trading arm of Oil & Gas multinationals on a global / portfolio basis rather than on a product by product basis. Trading is an integral part of getting our products to the market (transportation), in addition to hedging for the Extractives business. Given the integral functions of the Trading business, consistent with how Extractives Group operate (i.e., highly integrated), “Extractive Revenue” should be defined to remove reference to Jurisdiction of Extraction.	“Extractive Revenue” should be defined to remove the reference to Jurisdiction of Extraction.
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20.13	Qualifying transportation	This includes incidental storage, implying that some undefined amount of storage would not be qualified. The extractives industry involves the movement of tremendous volumes of products where storage is needed throughout the value chain. 2020 was a great example where fuel demand plummeted and all types of storage filled up quickly while supply & demand rebalanced. The market should dictate how much storage the industry needs.	Delete "incidental"
20.14(c)	Sale of Extractive Assets	Sale of Primary Processing Assets needs to be included as well.	Revised (c): The sale of Extractive Assets held in the course of carrying out the Group's Extractives Activity and assets that produce Extractives Revenue.
20.6	Extractives Revenue and carbon capture	The definition is limited to carbon capture utilisation and storage in connection with such removal of Extractive Products. This appears to mean that only carbon capture that results in the Extraction of more oil and gas qualifies. Carbon capture may also happen in wells that are no longer producing.	Strike "conducted in connection with such removal of Extractive Products."
20.12	Primary Processing	The use of "including the following" brings uncertainty. Given it is not possible to "split" some activities e.g. refining into the products listed and other products resulting from the refining process, it is necessary to expand.	Expand 12(a) list and clarify that the list is not exhaustive and is intended to include other products, not listed, which result from the same Primary Processing activity e.g. crude oil refining.
20.12	Primary Processing products	Processing of Gas to Liquids (GTL) typically takes place in the country of extraction. Some GTL products are mentioned in the Extractive Exclusion (e.g. Kerosene and gasoline) while others are not. Jet fuel not listed.	For clarity, suggest to make it clear that GTL, Bitumen and Natural gas are part of Primary Processing. [Or natural gas listed as an Extractives Product].

		Bitumen from oil sands, oil shale and heavy oil, have now been removed from the Extractives Exclusion. There is also an inconsistency with the inclusion of crude oil, but not natural gas within 12.1(a). There are other by-products of the primary processes to produce Extractive Products and Primary Processing Products that are not listed. Naphtha, natural gas liquids, aromatics, asphalt, tar, paraffins, lubricants basestock, CO2 and other gasses extracted along with crude and natural gas.	Include all by-products of the Primary Processing and add illustrative list: Naphtha, natural gas liquids, aromatics, asphalt, tar, paraffins, lubricants basestock, CO2 and other gases extracted along with crude and natural gas. How to keep the definition up-to-date in the MLC when technology will evolve?
Section 20.12	Primary Processing and combining two or more other products	In the first paragraph, blending is allowed, and then in the final paragraph combining two or more products is not qualified. These are in conflict with each other. Once a Primary Processing has resulted in a marketable basic commodity, then additional processing or blending after that point isn't "primary." There is no need to confuse matters by adding a "combing" test.	Either delete or modify to make it clear that activities after Primary Processing are excluded (whether additional processing, or other modifications prior to sale).
20.12	Primary Processing and petrochemicals	Petrochemicals and chemicals are in bracketed language. Plants that use crude as feedstock to make chemicals exist today. Aromatics are removed as part of primary processing of fuel to meet regulatory requirements. Crude, naphtha and ethane cracking are all Primary Processes that produce basic chemicals that are then sold or used for Secondary Processing to make plastics, polymers or other similar products. Feedstocks	We strongly encourage OECD to include aromatics and crude, naphtha and ethane cracking in the definition of Primary Processing.

		flow back and forth between refineries and basic chemical processing units. As the global economy seeks to use less transportation fuel, we will see more crude to chemical operations.	
Section 21	Transition	It would appear that for the transition phase it is intended that a simplified approach be applied which ignores the application of 20.14 which requires Extractives Revenue to be limited to revenue of an Entity that is resident in the Jurisdiction of Extraction – i.e. the border limitation to the exclusion is ignored for the transition period. However the drafting of this provision is by reference to whether the Group meets the profitability tests but then goes on to refer to “where a Disclosed Segment for which 75% or more of the revenues are...Extractives Revenues, irrespective of whether the revenues were reported in the Jurisdiction of Extraction, the segment may be treated as an Extractives Segment” - this creates a cross concept that could be confusing.	Extend the transition rule so that the removal of the cross-border restriction applies to both the non-Extractives revenue test and the Non-Extractives profitability test. Our suggested modification is as follows: Notwithstanding the provisions of this Act or this Schedule B, during the Initial Transition Phase, a Qualifying Extractives Group may demonstrate that it does not meet the non-Extractives profitability test or the non-Extractives Segment profitability test (as applicable) in the Period by applying any of the following calculations: “A Disclosed Segment for which 75 percent or more of the revenues for a Period are revenues derived from activities listed under 14 a, b and c, irrespective of whether these revenues were reported in the Jurisdiction of Extraction, may be treated as an Extractives Segment.”

		The transition rule appears to only suspend the “resident in the Jurisdiction of Extraction” rule when testing whether a segment has at least 75% Extractive Revenue. For segments that are below 75% Extractive Revenue, but need to be divided between Extractive and Non-Extractive, the “resident in the Jurisdiction of Extraction” test still applies. The “resident in the Jurisdiction of Extraction” test should be suspended for all purposes during Transition.	The “resident in the Jurisdiction of Extraction” test should be suspended for all purposes during Transition.