

THE MULTILATERAL CONVENTION TO IMPLEMENT AMOUNT A OF  
PILLAR ONE

TWO-PILLAR SOLUTION TO ADDRESS THE TAX CHALLENGES ARISING FROM THE  
DIGITALISATION OF THE ECONOMY

## Cover Note

The Inclusive Framework's Task Force on the Digital Economy (TFDE) has approved the publication of a text of the Multilateral Convention (MLC) to implement Amount A, together with its Explanatory Statement (ES) and the Understanding on the Application of Certainty for Amount A of Pillar One (UAC). This text reflects the consensus achieved so far among members on the technical architecture of Amount A, with different views on a handful of specific items noted in footnotes by a small number of jurisdictions who are constructively engaging to resolve differences.

In view of the significance of this reform for the international tax system, and guided by the 11 July 2023 Outcome Statement approved by 138 members of the Inclusive Framework, the publication of this document is intended to: ensure transparency; facilitate the ability of some members of the Inclusive Framework to engage in internal processes necessary to enable swift adoption by the TFDE; facilitate resolution of remaining differences by the Inclusive Framework; and prepare the MLC for signature.

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**Preamble**

The Parties to this Convention,

Recognising the need to address the tax challenges arising from the digitalisation of the economy;

Desiring effective reform to the international tax system through adoption of uniform rules to address those challenges in a fair, efficient and coordinated manner, and to ensure stability and certainty in the international tax framework;

Welcoming the October 2021 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy developed by members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting to comprehensively address the aforementioned tax challenges;

Desiring to allow the Parties to this Convention to exercise a taxing right with respect to a defined portion of the residual profits of multinational enterprises that meet certain revenue and profitability thresholds and that have a defined nexus to the markets of these Parties;

Wishing to ensure that this taxing right is implemented and exercised in a consistent and coordinated manner, and that multinational enterprises subject to the taxing right have access to mechanisms that provide tax certainty and prevent double or multiple taxation;

Noting the need to ensure that this taxing right may be exercised notwithstanding any provisions of tax agreements that would otherwise limit the application of such a taxing right;

Recognising the need to establish dispute prevention and resolution, and exchange of information mechanisms, and other competent authority relationships in order to permit the effective and efficient administration of this Convention, including in particular among Parties that have no prior tax information exchange or tax treaty relationship;

Noting the desire to withdraw existing digital services taxes and relevant similar measures with respect to all companies and their shared political commitment not to adopt new digital services taxes or relevant similar measures as of the beginning of the application of the new taxing right, including to use their best efforts, consistent with their constitutional order, to prevent such measures being adopted at the subnational level;

Have agreed as follows:

## PART I – GENERAL

### ***Article 1 – Application and Personal Scope***

1. This Convention shall apply only to the Group Entities of Covered Groups, except as otherwise provided.
2. This Convention shall have no implications other than the:
  - a) identification of a Covered Group and determination of taxation thereon in accordance with Parts II through IV;
  - b) administration, provision of tax certainty, and exchange of information and international cooperation in accordance with Part V; and
  - c) treatment of specific measures enacted by Parties in accordance with Part VI.

## PART II – DEFINITIONS

### **Article 2 – General Definitions**

For purposes of this Convention, the following definitions apply:

- a) the term “Acceptable Financial Accounting Standard” means:
  - i) the International Financial Reporting Standards; and
  - ii) the Generally Accepted Accounting Principles of:
    - A) Australia, Brazil, Canada, Member States of the European Union, Member States of the European Economic Area, Hong Kong (China), Japan, Mexico, New Zealand, the People’s Republic of China, the Republic of India, the Republic of Korea, Russia, Singapore, Switzerland, the Republic of Türkiye, the United Kingdom, and the United States of America; or
    - B) another Jurisdiction to the extent that the Conference of the Parties issues a decision confirming that its Generally Accepted Accounting Principles are equivalent to the International Financial Reporting Standards having regard to the extent of actual divergence of Financial Accounting Profit (or Loss) determinations under the Generally Accepted Accounting Principle in question as compared to the International Financial Reporting Standards;
- b) the term “Adjusted Profit Before Tax” has the meaning assigned to it in Annex B Section 2(1);
- c) the term “Adjusted Revenues” means the revenues, exclusive of value added taxes, goods and services taxes, sales taxes, or other similar taxes on consumption, that are reported in the Consolidated Financial Statements of a Group for a Period (or that would have been so reported if the Ultimate Parent Entity prepared Consolidated Financial Statements), modified to:
  - i) exclude revenue of the Group for the Period that relates to items excluded under Annex B Section 2(1)(a)(ii) and (iii), and allocate revenue related to items allocated under Annex B Section 2(1)(b)(iii) evenly among the Period in which the disposition occurs and the four subsequent Periods;
  - ii) exclude revenue for the Period derived by an Excluded Entity;
  - iii) adjust for any *prior period adjustment* under Annex B Section 2(1)(c) that relates to an amount that is classified as revenue under an Acceptable Financial Accounting Standard; and
  - iv) include the Group’s share of revenue derived from a Joint Operation or a Joint Venture, in the same proportion as the Group’s share of profit or loss derived from the Joint Operation or the Joint Venture. No adjustment shall be made if the Joint Venture is the Ultimate Parent Entity of another Covered Group in the Period;
- d) the term “Amount A Profit” means the amount determined for a Covered Group for a Period by:
  - i) subtracting 10 per cent of the Adjusted Revenues of the Covered Group for the Period from the Adjusted Profit Before Tax of the Covered Group for the Period; and



- ii) multiplying the amount calculated in subdivision (i) by 25 per cent;
- e) the term “Amount A Tax Return and Common Documentation Package” has the meaning assigned to it in Article 15(1);
- f) the term “Competent Authority” means any person, ministry, governmental agency or institution designated by a Party as responsible for all or part of the administration of the provisions of the Convention, as notified to the Depository from time to time;
- g) the term “Consolidated Financial Statements” means the independently audited financial statements prepared by the Ultimate Parent Entity under an Acceptable Financial Accounting Standard in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and other Group Entities are presented as those of a single economic entity, or where the Ultimate Parent Entity is the sole Group Entity, the independently audited financial statements of that Entity prepared under an Acceptable Financial Accounting Standard;
- h) the term “Contracting State” means a State that has signed and ratified, accepted or approved the Convention, in accordance with Article 41 regardless of whether the Convention has entered into force for that State pursuant to Article 48;
- i) the term “Controlling Interest” means a Specified Equity Interest in an Entity as a result of which the interest holder:
  - i) is required to consolidate the assets, liabilities, income, expenses and cash flows of the Entity on a line-by-line basis in accordance with an Acceptable Financial Accounting Standard; or
  - ii) would have been required to consolidate the assets, liabilities, income, expenses and cash flows of the Entity on a line-by-line basis if the interest holder had prepared Consolidated Financial Statements;
- j) the term “Covered Payment” means income arising in a Jurisdiction and paid to a Group Entity of a Covered Group located in another Jurisdiction, excluding:
  - i) payments to a *regulated financial institution* or a *segment entity* of a *regulated financial institution segment* as those terms are defined in Annex C Section 2;
  - ii) payments to an *extractives entity* or a *segment entity* of an *extractives segment* as those terms are defined in Annex C Section 3;
  - iii) payments related to *extractives revenues* that are made to a *mixed entity*, a *segment entity* of a *mixed segment*, a *non-extractives entity*, or a *segment entity* of a *non-extractives segment* as those terms are defined in Annex C Sections 3 and 4;
  - iv) payments to a Group Entity located in an *autonomous domestic business jurisdiction* as defined in Annex C Section 5;
  - v) payments that relate to *defence revenues* as defined in Annex C Section 6;
  - vi) dividends or other distributions paid in respect of a Specified Equity Interest;
  - vii) payments for the disposition of a Specified Equity Interest or of other similar interests, such as interests in a partnership or trust, that carry rights to the profits, capital or reserves of an Entity; and

- viii) payments to a Joint Venture or Joint Operation that do not meet the conditions in subdivisions (i) through (vii) in proportion to the share of profit or loss derived from the Joint Venture or Joint Operation that relates to Specified Equity Interests not held by the Covered Group;
- k) the term “Covered Withholding Tax” means the tax on income withheld in a Period in respect of a Covered Payment by the payor in the Jurisdiction in which the Covered Payment arises;
- l) the “Designated Payment Entity” of a Covered Group for a Period is:
  - i) the Ultimate Parent Entity, if it is a resident of a Party at the end of the Period; or
  - ii) in all other cases, the Group Entity identified under Annex B Section 3;
- m) the term “Elimination Profit (or Loss)” has the meaning assigned to it in Annex B Section 4;
- n) the “Elimination Threshold Return on Depreciation and Payroll” of a Covered Group for a Period is determined by multiplying the Covered Group's Adjusted Revenues for the Period by 10 per cent and dividing the product by the sum of the *accounting depreciation and accounting payroll* of the Covered Group determined under Annex B Section 5;
- o) the term “Entity” means any juridical person or arrangement that prepares, or is required to prepare, separate financial accounts;
- p) the term “Entity Financial Accounting Profit (or Loss)” means the profit or loss determined for an Entity (before any consolidation adjustments eliminating intra-Group transactions) in preparing Consolidated Financial Statements of the Group;
- q) the term “Entity Financial Third-party Accounting Revenues” means the revenues (or in the case of a *qualifying extractives group* or a Group including one or more *regulated financial institutions*, the revenues that are taken into account in calculating *non-extractives adjusted revenues* or *non-RFS adjusted revenues*, as those terms are defined in Annex C Sections 2 and 3) determined for a Group Entity in preparing Consolidated Financial Statements of the Covered Group after eliminating intra-Group transactions with Group Entities;
- r) the term “Excluded Entity” means an Entity:
  - i) that under the provisions of Annex B Section 1 is:
    - A) a *governmental entity*;
    - B) an *international organisation*;
    - C) a *non-profit organisation*;
    - D) a *pension fund*;
    - E) an *investment fund* that is an Ultimate Parent Entity; or
    - F) a *real estate investment vehicle* that is an Ultimate Parent Entity; or
  - ii) the value of which is at least 95 per cent owned (directly or through a chain of Excluded Entities) by one or more Excluded Entities referred to in subdivision (i) (other than a *pension services entity* described in Annex B Section 1(1)(f)), and that:

- A) operates exclusively or almost exclusively to hold assets or invest funds for the benefit of the Excluded Entity or Entities; or
  - B) only carries out activities that are ancillary to those carried out by the Excluded Entity or Entities;
- s) the term “Existing Tax Agreement” means an agreement of which one of the purposes is the avoidance of double taxation (including agreements where the scope is broader than taxation) with respect to taxes on income (whether or not other taxes are also covered) that is in force at the time this Convention enters into force between any combination of two or more:
- i) Parties; and/or
  - ii) jurisdictions or territories to which this Convention applies pursuant to a declaration by a Party pursuant to Article 42(1);
- t) the term “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);
- u) the term “Financial Accounting Profit (or Loss)” means the profit or loss that is set out in the Consolidated Financial Statements of the Ultimate Parent Entity (or that would have been so set out if the Ultimate Parent Entity had prepared Consolidated Financial Statements) taking into account all income and expenses of the Group and excluding income and expenses reported as other comprehensive income;
- v) the term “Gross Domestic Product” means:
- i) the gross domestic product value as published by the United Nations for a Jurisdiction for the most recent calendar year that does not end after the Period ends, expressed at current United States dollars and converted to euro based on the average foreign exchange rate for the month of December determined by the foreign exchange reference rates as quoted by the European Central Bank;
  - ii) if the value described in subdivision (i) is not available for a Jurisdiction for any of the five calendar years that immediately precede the Period, the value in current United States dollars as published by the World Bank and converted to euro based on the average foreign exchange rate for the month of December determined by the foreign exchange reference rates as quoted by the European Central Bank; or
  - iii) if the values described in subdivisions (i) and (ii) are not available, the simple average of ratio of Gross Domestic Product to population for all Jurisdictions for which Gross Domestic Product is available, multiplied by the Jurisdiction’s population as published by the United Nations for the relevant calendar year, or if not available, the preceding calendar year;
- w) the term “Group” means an Ultimate Parent Entity and any other Entities whose assets, liabilities, income, expenses and cash flows are included in the Consolidated Financial Statements of the Ultimate Parent Entity or would have been so included if the Ultimate Parent Entity had prepared Consolidated Financial Statements;
- x) the term “Group Entity” means an Entity, other than an Excluded Entity, that is included in a Group;

- y) the term “Joint Operation” means an arrangement where the parties that have joint control of the arrangement have rights to the assets, and obligations for the liabilities, relating to the arrangement, and the Ultimate Parent Entity of the Group is required to recognise its interest in the joint operation on a line-by-line basis in its Consolidated Financial Statements under an Acceptable Financial Accounting Standard;
- z) the term “Joint Venture” means an arrangement where the parties that have joint control of the arrangement have rights to the net assets of the arrangement, and the financial results of the arrangement are reported in the Consolidated Financial Statements of a Group under the equity method under an Acceptable Financial Accounting Standard;
- aa) the term “Jurisdiction” means:
  - i) a State; or
  - ii) a jurisdiction or territory for whose international relations a State is responsible;
- bb) the term “Jurisdictional Depreciation and Payroll” has the meaning assigned to it in Annex B Section 5(3);
- cc) the term “Jurisdictional Return on Depreciation and Payroll” has the meaning assigned to it in Annex B Section 5(2);
- dd) the term “Lower Income Jurisdiction” means a Jurisdiction that is defined by the World Bank as a low-income economy or as a lower-middle-income economy by reference to *gross national income* per capita using the World Bank Atlas method for the most recent World Bank determination period that ends in the Period immediately preceding the Period;<sup>1</sup>
- ee) the term “OECD Model” means the OECD Model Tax Convention on Income and on Capital;
- ff) the term “Party” means a State for which this Convention is in force pursuant to Article 48;
- gg) the term “Period” means a reporting period with respect to which the Ultimate Parent Entity of a Group prepares, or is required to prepare, Consolidated Financial Statements;
- hh) the term “Return on Depreciation and Payroll” has the meaning assigned to it in Annex B Section 5(1);
- ii) the term “Signatory” means a State which has signed this Convention but for which the Convention is not yet in force;
- jj) the term “Specified Equity Interest” means an equity interest that carries rights to the profits, capital or reserves of an Entity;
- kk) the term “Taxable Presence” means a part of a Group Entity, other than a *regulated financial institution* described in Annex C Section 2(3)(a) or an *extractives entity* described in Annex C Section 3(2)(c), provided that the part is liable to tax on a net basis, whether under an income tax or another type of tax, in a Jurisdiction other than the Jurisdiction in which the Group Entity is located for the Period. This term also includes deemed Taxable Presences under Annex B Section 4(5)(e);
- ll) the term “Ultimate Parent Entity” means:

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<sup>1</sup> Brazil and Colombia have expressed objections to subparagraph (dd) to the extent that it impacts MDSH calculations in Article 5(2)(e) and 5(2)(f)(ii), as well as corresponding aspects of Annex B Section 6(6).

- i) an Entity, other than a *governmental entity* or *pension fund* described in Annex B Section 1(1)(a) and (e), respectively, that:
  - A) directly or indirectly owns a Controlling Interest in any other Entity; and
  - B) is not directly or indirectly owned by another Entity with a Controlling Interest, unless that other Entity is a *governmental entity* or a *pension fund*; or
- ii) an Entity, other than an Entity described in subdivision (i), that is none of the following:
  - A) part of another Group;
  - B) an Excluded Entity;
  - C) an *investment fund* described in Annex B Section 1(1)(c); or
  - D) a *real estate investment vehicle* described in Annex B Section 1(1)(g);
- mm) the term “UN Model” means the United Nations Model Double Taxation Convention Between Developing and Developed Countries;
- nn) the term “Withholding Tax Upward Adjustment” has the meaning assigned to it in Annex B Section 6(1).

### **Article 3 – Covered Group**

1. For purposes of this Convention, and subject to paragraph 2, a Group is a Covered Group for a Period if it has in that Period:

- a) Adjusted Revenues greater than EUR 20 billion; and
- b) a *pre-tax profit margin* greater than 10 per cent.

2. If in both of the two Periods immediately preceding a Period (or, if a Group was in existence for only one Period preceding a Period, in that one Period) a Group was not a Covered Group, the Group is not a Covered Group for the Period unless, in addition to the requirements of paragraph 1:

- a) such Group has a *pre-tax profit margin* greater than 10 per cent in at least two of the four Periods immediately preceding the Period; and
- b) the sum of the Adjusted Profit Before Tax of the Group over the five-Period term ending with the Period (calculated pursuant to Annex B Section 2(1) as though the Group were a Covered Group and without taking into account *relevant net losses*) divided by the sum of the Adjusted Revenues of the Group over the same term is greater than 10 per cent.

If a Group was in existence for fewer than four Periods immediately preceding the Period, subparagraph (a) shall not apply, and subparagraph (b) shall apply with respect to the term that begins with the first Period for which the Group was in existence and ends with the Period.

3. The term “pre-tax profit margin” means the Adjusted Profit Before Tax of a Group for a Period (calculated pursuant to Annex B Section 2(1) as though the Group were a Covered Group and without taking into account *relevant net losses*) divided by the Adjusted Revenues of that Group for the Period.

4. For the purpose of determining the application of this Convention to a Group that includes a *regulated financial institution*, the provisions of Annex C Section 2 shall apply.
5. For the purpose of determining the application of this Convention to a *qualifying extractives group*, the provisions of Annex C Section 3 shall apply.
6. For the purpose of applying this Convention to a *disclosed segment* of a Group:
  - a) the provisions of Annex C Section 4 shall apply; and
  - b) where a *disclosed segment* is a *covered segment*, the provisions of this Convention shall apply to one or more *segment entities* of the Group.
7. For the purpose of applying this Convention to a Group that is otherwise a Covered Group and operates in one or more *autonomous domestic business jurisdictions*, Annex C Section 5(6) and (7) shall apply.
8. For the purpose of applying this Convention to a *defence group* that is otherwise a Covered Group, Annex C Section 6(4) shall apply.
9. For any Period for which this paragraph applies pursuant to Article 43(1), each reference in this Convention to “EUR 20 billion” shall be replaced with a reference to “EUR 10 billion”.
10. Where a Period of a Covered Group is either shorter than or longer than twelve months, any monetary amount in this Convention that is determined by reference to a Period shall be proportionately increased or reduced to correspond with the length of the Period.

## PART III – ALLOCATION AND TAXATION OF PROFITS

### **Article 4 – Taxation of Profits of a Covered Group**

1. Subject to paragraphs 2 and 3, a Party in which a Covered Group has nexus under Article 8 for a Period may impose tax on the Designated Payment Entity of the Covered Group with respect to the portion of the Amount A Profit of the Covered Group that is allocated under Article 5 to that Party for the Period.
2. The amount of Amount A Profit that may be taxed in a Party for a Period in accordance with paragraph 1 shall be reduced by the product of:
  - a) the total Amount A Profit allocated to the Party under Article 5; and
  - b) the amount obtained by dividing:
    - i) the sum of the *Amount A relief amount* (excluding any *prior unallocated Amount A relief*), as those terms are defined in Article 11(2), with respect to which the obligation to provide relief from double taxation is allocated to any *relieving jurisdiction* under Article 11 that:
      - A) is not a Party; and
      - B) has an agreement for the avoidance of double taxation with respect to taxes on income (whether or not other taxes are also covered) in force with the Party that contains a provision corresponding to Article 7 (Business profits) of the OECD Model or the UN Model; by
    - ii) the *Amount A relief amount* of the Covered Group (excluding any *prior unallocated Amount A relief*) as those terms are defined in Article 11(2).
3. For Periods ending on or before the date that is two years after this Convention has entered into force, paragraph 2 shall apply without regard to whether paragraph 2(b)(i)(B) is satisfied.

### **Article 5 – Allocation of Profit Associated with Revenues in the Market**

1. The portion of the Amount A Profit of a Covered Group that is allocated to a Jurisdiction in which a Covered Group has nexus under Article 8 for a Period shall be determined by:
  - a) multiplying the Amount A Profit of the Covered Group for the Period by the Adjusted Revenues of the Covered Group for the Period that are sourced to the Jurisdiction under Article 6, divided by Adjusted Revenues of the Covered Group for the Period; and
  - b) if the *adjusted elimination profit (or loss)* of the Covered Group in the Jurisdiction for the Period is greater than or equal to EUR 50 million, subtracting the *marketing and distribution profits safe harbour adjustment* from the amount determined under subparagraph (a).
2. For purposes of this Article:
  - a) the “marketing and distribution profits safe harbour adjustment” for a Covered Group in a Jurisdiction for a Period shall be the lower of:

- i) the amount determined in accordance with paragraph 1(a); and
  - ii) the *jurisdictional offsetting profits* of the Covered Group in the Jurisdiction;
- b) the “jurisdictional offsetting profits” of a Covered Group in a Jurisdiction for a Period shall be the *adjusted jurisdictional excess profits* of the Covered Group in the Jurisdiction defined in subparagraph (c) multiplied by the *jurisdictional offset percentage* defined in subparagraph (d);
- c) the “adjusted jurisdictional excess profits” of a Covered Group in a Jurisdiction for a Period shall be equal to the higher of:
  - i) zero; or
  - ii) the *adjusted elimination profit (or loss)* for the Covered Group in the Jurisdiction for the Period minus the higher of:
    - A) the Elimination Threshold Return on Depreciation and Payroll of the Covered Group multiplied by the Jurisdictional Depreciation and Payroll of the Covered Group in the Jurisdiction for the Period; and
    - B) 3 per cent<sup>2</sup> of the Adjusted Revenues of the Covered Group that are sourced under Article 6 to the Jurisdiction for the Period;
- d) the “jurisdictional offset percentage” in a Jurisdiction for a Period shall be:
  - i) 90 per cent for a *low depreciation and payroll jurisdiction* as defined in subparagraph (e);
  - ii) in cases other than provided in subdivision (i),
    - A) 25 per cent where the Jurisdiction is a Lower Income Jurisdiction; and
    - B) 35 per cent in other cases than provided in clause (A);
- e) the term “low depreciation and payroll jurisdiction” for a Covered Group in a Period means a Jurisdiction in which the ratio of Jurisdictional Depreciation and Payroll to the Adjusted Revenues sourced to the Jurisdiction under Article 6 is less than 75 per cent of the ratio of the sum of the *accounting depreciation* and *accounting payroll* of the Covered Group determined under Annex B Section 5 to the Adjusted Revenues for the Covered Group;<sup>3</sup>
- f) the “adjusted elimination profit (or loss)” of a Covered Group in a Jurisdiction for a Period shall be the sum of the:
  - i) Elimination Profit (or Loss); and
  - ii) Withholding Tax Upward Adjustments;<sup>4</sup>

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<sup>2</sup> Brazil, Colombia, and India have expressed objections to subparagraph (c)(ii)(B).

<sup>3</sup> Brazil, Colombia and India have expressed objections to subparagraph (e), which extend also to corresponding aspects of paragraph 2(d) above.

<sup>4</sup> Brazil, Colombia and India have expressed objections to subparagraph (f)(ii).



of the Covered Group in the Jurisdiction for the Period.

### **Article 6 – Sources of Adjusted Revenues**

1. The provisions of this Article, Article 7, and Annex D shall apply to determine the Jurisdictions in which the Adjusted Revenues of a Covered Group are treated as arising for purposes of this Convention. For that purpose:

- a) the sources of Adjusted Revenues shall be determined separately for each category of Adjusted Revenues identified in Article 7;
- b) the categories in which Adjusted Revenues fall shall be based on the ordinary or predominant character of the *transactions* from which they derive, determined on the basis of their substance, irrespective of legal form;
- c) the sources of Adjusted Revenues that are not described in Article 7 shall be determined by reference to the most analogous category of Adjusted Revenues described in Article 7.

2. Each Party shall require the Group Entities of a Covered Group to apply a *reliable method* to determine the sources of all Adjusted Revenues of the Covered Group from each category of *transactions* in which it engages. Where a Covered Group applies such a *reliable method* with respect to Adjusted Revenues derived from a category of *transactions* in which it engages, that *reliable method* will determine the sources of those Adjusted Revenues.

3. For purposes of this Article, Article 7, and Annex D:

- a) the term “reliable method” means a method that a Covered Group applies on the basis of *reliable indicators* or, to the extent provided in subdivisions (iii) and (iv), *allocation keys*, to determine the Jurisdictions in which all or a portion of its Adjusted Revenues are treated as arising. For this purpose:
  - i) to be considered reliable, a method other than an *allocation key* must account for differences among Jurisdictions in the nature, quantity and prices of the goods, content, property, products or services that are sold, licensed or otherwise alienated, or provided by the Covered Group;
  - ii) notwithstanding paragraph 1(a) and subdivision (i), where a Covered Group applies a *reliable method* to determine the sources of Adjusted Revenues derived from one or more similar *transactions*, such method shall be considered a *reliable method* with respect to Adjusted Revenues derived from any other *transactions* that would not have been entered into but for the first group of *transactions*, provided that:
    - A) the Adjusted Revenues from the other *transactions* do not exceed 15 per cent of the total Adjusted Revenues from both groups of *transactions* combined; and
    - B) the total Adjusted Revenues for which sources are determined pursuant to this subdivision (ii) do not exceed 5 per cent of the Covered Group’s Adjusted Revenues for the Period;
  - iii) except as provided in subdivision (iv), an *allocation key* shall be considered a *reliable method* only with respect to Adjusted Revenues for which no sources have been determined based on *reliable indicators*, and only if the following requirements are met:

- A) the *allocation key* is expressly permitted in the relevant sourcing rule in Annex D;
  - B) the Covered Group demonstrates that it has taken reasonable steps to identify a *reliable indicator* among the indicators enumerated in Annex D with respect to the relevant category of Adjusted Revenues, and has concluded that no such *reliable indicator* is available; and
  - C) the Covered Group identifies and excludes from the application of the *allocation key* any Jurisdictions in which, on the basis of legal, regulatory or documented structural commercial considerations, no Adjusted Revenues could reasonably be expected to arise; and
- iv) in the case of transport services described in Article 7(1)(d)(vi) or (vii), the *allocation key* provided in the relevant part of Annex D shall be considered a *reliable method*;
- b) the term “reliable indicator” means information other than an *allocation key* that identifies the source of Adjusted Revenues consistently with the revenue sourcing principle identified in Article 7 with respect to the category of Adjusted Revenues at issue, and that meets either of the following two requirements:
- i) the indicator meets one or more of the following reliability tests:
    - A) the indicator is relied upon by the Covered Group for commercial purposes or to fulfil legal, regulatory, or other related obligations;
    - B) the indicator is verified by information provided to the Covered Group by a third party that has collected the information for its own commercial purposes or pursuant to its own legal, regulatory, or other related obligations; or
    - C) the indicator and one or more other indicators that are enumerated in Annex D with respect to the category of *transactions* at issue both identify the same source; or
  - ii) the indicator does not meet any of the tests in subdivision (i), but:
    - A) the Covered Group provides documentation to the *review panel* or *determination panel* in an *advance certainty* review requested under Article 22 demonstrating that the indicator is reliable and explaining why it was used in place of an indicator enumerated in Annex D; and
    - B) the indicator is agreed in an *advance certainty outcome* pursuant to Article 29;
- c) the term “allocation key” refers to a method specified in Annex D for determining the sources of Adjusted Revenues derived from a category of *transactions* without reference to *reliable indicators*.

4. The sources of any Adjusted Revenues of a Covered Group for which a *reliable method* has not been applied in accordance with paragraph 2 shall be determined using:

- a) in the case of Adjusted Revenues derived from the sale of components described in Article 7(1)(c), the *component allocation key*;
- b) in the case of Adjusted Revenues derived from the provision of services described in Article 7(1)(d)(ix), the *service allocation key*; and

- c) in all other cases, the *global allocation key*.

### **Article 7 – Sourcing Principles for Categories of Adjusted Revenues**

1. The following principles shall apply for the purpose of identifying a *reliable method* to determine the Jurisdictions in which the Adjusted Revenues of a Covered Group shall be treated as arising:

- a) Adjusted Revenues derived from the sale of finished goods shall be treated as arising in the Jurisdiction in which the finished goods are delivered to the final customer;
- b) Adjusted Revenues derived from the provision of digital content that is not a component described in subparagraph (c) are treated as arising in accordance with subparagraph (d)(ix);
- c) Adjusted Revenues derived from the sale to a business customer of a component that is designed to be incorporated directly or indirectly into a finished good that will be sold are treated as arising in the Jurisdiction in which the finished goods containing the component are delivered to the final customer;
- d) in the case of Adjusted Revenues derived from the provision of services:
  - i) Adjusted Revenues derived from the provision of *location-specific services* (other than services described in subdivision (vi) and subparagraph (g)) are treated as arising:
    - A) in the case of a service that is connected to tangible property, in the Jurisdiction in which the property is located; and
    - B) in respect of any other *location-specific service*, in the Jurisdiction in which the service is performed;
  - ii) Adjusted Revenues derived from the provision of online advertising services are treated as arising in the Jurisdiction in which the viewer of the advertisement is located;
  - iii) Adjusted Revenues derived from the provision of advertising services other than those covered in subdivision (ii) are treated as arising in the Jurisdiction in which the advertisement is displayed or received;
  - iv) Adjusted Revenues derived from the provision of online intermediation services that facilitate the sale or purchase of tangible goods, digital content or services other than *location-specific services* are treated as arising:
    - A) 50 per cent in the Jurisdiction in which the purchaser of the tangible good, digital content or service other than *location-specific service* is located; and
    - B) 50 per cent in the Jurisdiction in which the seller of the tangible good, digital content or service other than *location-specific service* is located;
  - v) Adjusted Revenues derived from the provision of online intermediation services that facilitate the sale or purchase of *location-specific services* are treated as arising:
    - A) 50 per cent in the Jurisdiction in which the purchaser of the *location-specific service* is located; and
    - B) 50 per cent in the Jurisdiction in which the *location-specific services* are performed;

- vi) Adjusted Revenues derived from the provision of passenger transport services (including *transactions*, other than customer reward programs, that are ancillary to the transport services) are treated as arising:
    - A) in the case of transport by air, in the Jurisdiction in which the passengers disembark from the aircraft; and
    - B) in the case of transport other than by air, in the Jurisdiction in which the passengers disembark from the vehicle or vessel provided by or on behalf of the Covered Group (other than at an intermediate transit stop scheduled for less than 24 hours to facilitate onward transport of the passengers by or on behalf of the Covered Group);
  - vii) Adjusted Revenues derived from the provision of cargo transport services and ancillary services are treated as arising:
    - A) in the case of transport by air:
      - 1) 50 per cent in the Jurisdiction in which the cargo is loaded onto the aircraft; and
      - 2) 50 per cent in the Jurisdiction in which the cargo is unloaded from the aircraft;
    - B) in the case of transport other than by air (or transport involving both air and non-air transport services that are not separately itemised):
      - 1) 50 per cent in the Jurisdiction in which the cargo is loaded onto the vehicle or vessel provided by or on behalf of the Covered Group (other than at an intermediate transit stop to facilitate the onward transport of the cargo by or on behalf of the Covered Group); and
      - 2) 50 per cent in the Jurisdiction in which the cargo is unloaded from the vehicle or vessel provided by or on behalf of the Covered Group (other than at an intermediate transit stop to facilitate the onward transport of the cargo by or on behalf of the Covered Group);
  - viii) Adjusted Revenues generated in connection with the operation of a customer reward program (other than Adjusted Revenues generated from the redemption of awarded units for goods or services) are treated as arising in each Jurisdiction in proportion to the number of members located in each Jurisdiction who have redeemed or earned one or more units during the Period;
  - ix) Adjusted Revenues derived from the provision of any service not described in subdivisions (i) through (viii) are treated as arising in the Jurisdiction in which the service is used;
- e) Adjusted Revenues derived from the licensing, sale or other alienation of *intangible property* are treated as follows:
- i) in the case of *intangible property* related to finished goods or components, Adjusted Revenues are treated as arising in the Jurisdiction in which the finished goods (including the finished goods containing the component) are delivered to the final customer;

- ii) in the case of *intangible property* that supports a service or digital content, Adjusted Revenues are treated as arising in the Jurisdiction in which the service or digital content is used;
- iii) in all other cases, Adjusted Revenues are treated as arising in the Jurisdiction in which the *intangible property* is used;
- f) Adjusted Revenues derived from the licensing, sale, or other alienation of user data are treated as arising in the Jurisdiction in which the user associated with the data is located;
- g) Adjusted Revenues derived from the sale, lease or other alienation of *immovable property* are treated as arising in the Jurisdiction in which the *immovable property* is located; and
- h) Adjusted Revenues derived from grants, subsidies and refundable credits made or funded by governments or *international organisations* are treated as arising:
  - i) in each Jurisdiction that made or funded that grant, subsidy, or refundable credit, in proportion to the funding provided; or
  - ii) in the case of a grant, subsidy, or refundable credit made or funded by multiple Jurisdictions for which the share of funding provided by each Jurisdiction is not made available to the Covered Group, equally in each such Jurisdiction.

2. Adjusted Revenues that are not derived from third-party customers of the Covered Group and are not otherwise covered by paragraph 1(a) through (h) shall be treated as arising in each Jurisdiction in the same proportion as the Adjusted Revenues arising under paragraph 1(a) through (h).

### **Article 8 – Nexus**

For purposes of this Convention, a Covered Group shall be treated as having nexus in a Jurisdiction for a Period if the Adjusted Revenues of the Covered Group for the Period that are treated as arising in that Jurisdiction under Articles 6 and 7, and Annex D are equal to or greater than:

- a) EUR 1 million; or
- b) in the case of a Jurisdiction with a Gross Domestic Product of less than EUR 40 billion with respect to the Period, EUR 250 000.

## PART IV – ELIMINATION OF DOUBLE TAXATION

### **Article 9 – Relief for Amount A Taxation**

A Party that is a *specified jurisdiction*, as defined in Article 10, and is identified as a *relieving jurisdiction* with respect to a Covered Group for a Period under Article 11(3) because it is allocated the obligation to eliminate double taxation with respect to a portion of the *Amount A relief amount* under Article 11(6) through (15), shall apply the provisions of Article 12 to the Group Entities described in Article 13 to eliminate that double taxation.

### **Article 10 – Identification of the Specified Jurisdictions for a Covered Group**

For purposes of this Part, a “specified jurisdiction” with respect to a Covered Group for a Period means each Jurisdiction that:

- a) is part of the smallest number of Jurisdictions with respect to which the sum of Elimination Profit (or Loss) of those Jurisdictions totals at least 95 per cent of the sum of Elimination Profit (or Loss) for all Jurisdictions for the Period (giving priority to Jurisdictions with higher Elimination Profit (or Loss) over those with lower Elimination Profit (or Loss));
- b) is not identified in subparagraph (a) and has Elimination Profit (or Loss) equal to or greater than EUR 50 million for the Period; or
- c) is not identified in subparagraph (a) or (b) and satisfies each of the following criteria:
  - i) has Elimination Profit (or Loss) equal to or greater than EUR 10 million for the Period;
  - ii) has Jurisdictional Return on Depreciation and Payroll greater than 1 500 per cent of the Return on Depreciation and Payroll for the Covered Group; and
  - iii) has neither a general rate of income tax on business profits of at least 15 per cent nor a domestic minimum top-up tax which raises the effective income tax rate of the Covered Group in that jurisdiction to 15 per cent or more.

### **Article 11 – Allocation of the Obligation to Eliminate Double Taxation with Respect to the Amount A Relief Amount**

1. This Article shall apply to determine the extent to which a *specified jurisdiction* under Article 10 shall be a *relieving jurisdiction* as defined in paragraph 3 with respect to a Covered Group for a Period.

2. The following definitions apply for purposes of this Part:

- a) the “Amount A relief amount” of a Covered Group for a Period is the lower of:
  - i) the sum of Amount A Profit allocated to each Jurisdiction under Article 5 plus the *prior unallocated Amount A relief*; and
  - ii) the sum for all *specified jurisdictions of*:

- A) the Jurisdictional Depreciation and Payroll; multiplied by
  - B) the amount by which the *adjusted jurisdictional return on depreciation and payroll* prior to Tier 1 allocations exceeds the Elimination Threshold Return on Depreciation and Payroll;
- b) the “prior unallocated Amount A relief” of a Covered Group for a Period shall equal:
- i) in cases where the Group was not a Covered Group in the immediately preceding Period, zero; and
  - ii) in all other cases, the sum of any surpluses of Amount A Profit allocated under Article 5 to all Jurisdictions relative to amounts calculated in subparagraph (a)(ii) in each of the previous four Periods respectively to the extent those surpluses have not already been taken into account to increase the *Amount A relief amount* in an intervening Period.

For the purpose of applying this subparagraph, if a Group was a Covered Group for fewer than four consecutive Periods immediately preceding the Period, subdivision ii) shall apply only to those consecutive Periods for which the Group was a Covered Group.

- c) for each *specified jurisdiction* with respect to a Covered Group, the “adjusted jurisdictional return on depreciation and payroll” that is applicable for each Tier and for each calculation within Tier 1 for a Period is the Jurisdictional Return on Depreciation and Payroll for that *specified jurisdiction*, determined under Annex B Section 5, recalculated after subtracting from the Elimination Profit (or Loss) used in that calculation:
- i) the amount of the *marketing and distribution profits safe harbour adjustment* of the Covered Group in that *specified jurisdiction* in the Period, if any, with respect to which the Amount A Profit allocated to that *specified jurisdiction* has already been reduced under Article 5(1)(b), reduced<sup>5</sup> by:
    - A) the *marketing and distribution profits safe harbour adjustment* multiplied by;
    - B) the Withholding Tax Upward Adjustment for that Period divided by the *adjusted elimination profit (or loss)*; and
  - ii) the sum of the *Amount A relief amount*, if any, with respect to which the obligation to eliminate double taxation has already been allocated to that *specified jurisdiction* under the rules of paragraphs 6 through 15.

3. A *specified jurisdiction* shall be a “relieving jurisdiction” with respect to a Covered Group for a Period to the extent that the obligation to eliminate double taxation with respect to the Covered Group is allocated to that *specified jurisdiction* under paragraphs 6 through 15. The total *Amount A relief amount* for a Covered Group for which the obligation to eliminate double taxation is allocated to a *relieving jurisdiction* for a Period is the sum of the amounts allocated to such *relieving jurisdiction* under each Tier in paragraph 5 by following the steps in paragraphs 6 through 15.

4. The *specified jurisdictions* with respect to a Covered Group for a Period shall apply the rules in paragraphs 6 through 15, in order, until either the obligation to eliminate double taxation with respect to the *Amount A relief amount* with respect to that Covered Group has been fully allocated to *relieving jurisdictions*, or all paragraphs of this Article have been applied. Later paragraphs apply only to the extent

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<sup>5</sup> Brazil, Colombia, and India have expressed objections to subparagraph (c)(i).

that there is *Amount A relief amount* for which the obligation to eliminate double taxation remains unallocated after applying earlier paragraphs.

5. With respect to a Covered Group and for a Period:

- a) a *specified jurisdiction* is within Tier 1 where the Covered Group has an *adjusted jurisdictional return on depreciation and payroll* in that *specified jurisdiction* that is greater than 1 500 per cent of the Return on Depreciation and Payroll of the Covered Group and greater than 40 per cent;
- b) a *specified jurisdiction* is within Tier 2 where the Covered Group has an *adjusted jurisdictional return on depreciation and payroll* in that *specified jurisdiction* that is greater than 150 per cent of the Return on Depreciation and Payroll of the Covered Group and greater than 40 per cent;
- c) a *specified jurisdiction* is within Tier 3A where the Covered Group has an *adjusted jurisdictional return on depreciation and payroll* in that *specified jurisdiction* that is greater than the Elimination Threshold Return on Depreciation and Payroll of the Covered Group and greater than 40 per cent; and
- d) a *specified jurisdiction* is within Tier 3B where the Covered Group has an *adjusted jurisdictional return on depreciation and payroll* in that *specified jurisdiction* that is greater than the Elimination Threshold Return on Depreciation and Payroll of the Covered Group.

6. With respect to a Covered Group for a Period, the *specified jurisdiction* in Tier 1 with that Covered Group's highest *adjusted jurisdictional return on depreciation and payroll* shall be allocated the obligation to eliminate double taxation with respect to a portion of the *Amount A relief amount* that is the lowest of:

- a) the amount that reduces the *adjusted jurisdictional return on depreciation and payroll* of that *specified jurisdiction* until it is equal to the *adjusted jurisdictional return on depreciation and payroll* of the *specified jurisdiction* with the second highest *adjusted jurisdictional return on depreciation and payroll*;
- b) the *Amount A relief amount* of that Covered Group; and
- c) the amount that reduces the *adjusted jurisdictional return on depreciation and payroll* for that *specified jurisdiction* to the higher of 1 500 per cent of the Return on Depreciation and Payroll for the Covered Group and 40 per cent.

7. With respect to a Covered Group for a Period, where a portion of the *Amount A relief amount* is allocated to the *specified jurisdiction* with the highest *adjusted jurisdictional return on depreciation and payroll* under paragraph 6(a), the *specified jurisdiction* with the highest *adjusted jurisdictional return on depreciation and payroll* and the *specified jurisdiction* with the second highest *adjusted jurisdictional return on depreciation and payroll* shall each be allocated the obligation to eliminate double taxation with respect to the *Amount A relief amount* in proportion to the ratio that the amount referred to in subparagraph (c) with respect to that *specified jurisdiction* bears to the sum of the amount referred to in that subparagraph with respect to both *specified jurisdictions*, until the amount allocated under this paragraph reaches the lowest of:

- a) the amount that reduces their *adjusted jurisdictional return on depreciation and payroll* of those *specified jurisdictions* until they are equal to the *adjusted jurisdictional return on depreciation and payroll* of the *specified jurisdiction* with the third highest *adjusted jurisdictional return on depreciation and payroll*;
- b) the remaining *Amount A relief amount* of that Covered Group; or



- c) the amount that reduces the *adjusted jurisdictional return on depreciation and payroll* of those *specified jurisdictions* to the higher of 1 500 per cent of the Return on Depreciation and Payroll for the Covered Group and 40 per cent.

8. The approach to apportionment of the obligation to eliminate double taxation with respect to the *Amount A relief amount* described in paragraph 7 shall apply iteratively to each additional *specified jurisdiction* in Tier 1, starting with the *specified jurisdiction* with the next highest *adjusted jurisdictional return on depreciation and payroll*, until:

- a) the obligation to eliminate double taxation with respect to the *Amount A relief amount* of the Covered Group for a Period has been fully allocated to *specified jurisdictions* in Tier 1; or
- b) the *adjusted jurisdictional return on depreciation and payroll* for each *specified jurisdiction* in Tier 1 is equal to the higher of 1 500 per cent of the Return on Depreciation and Payroll for the Covered Group in a Period and 40 per cent.

9. Any obligation to eliminate double taxation with respect to the *Amount A relief amount* with respect to a Covered Group for a Period that remains unallocated after applying paragraphs 6 through 8 is allocated to each *specified jurisdiction* in Tier 2 in proportion to the ratio of the *jurisdictional Tier 2 excess profit* of that *specified jurisdiction* to the sum of the *jurisdictional Tier 2 excess profit* of all *specified jurisdictions* in Tier 2 with respect to the Covered Group for the Period, until either:

- a) the obligation to eliminate double taxation with respect to the remaining *Amount A relief amount* of that Covered Group is fully allocated; or
- b) the amount allocated with respect to that Covered Group reduces the *adjusted jurisdictional return on depreciation and payroll* for such *specified jurisdiction* to the higher of 150 per cent of the Return on Depreciation and Payroll for the Covered Group and 40 per cent.

10. The “jurisdictional Tier 2 excess profit” of a *specified jurisdiction* with respect to a Covered Group for a Period is the greater of zero or the amount determined by:

- a) subtracting the higher of 150 per cent of the Return on Depreciation and Payroll for the Covered Group and 40 per cent from the *adjusted jurisdictional return on depreciation and payroll*; and
- b) multiplying the amount calculated in subparagraph (a) by Jurisdictional Depreciation and Payroll.

11. Any obligation to eliminate double taxation with respect to the *Amount A relief amount* with respect to a Covered Group for a Period that remains unallocated after applying paragraphs 6 through 10 is allocated to each *specified jurisdiction* in Tier 3A in proportion to the ratio of the *jurisdictional Tier 3A excess profit* of that *specified jurisdiction* to the sum of the *jurisdictional Tier 3A excess profit* of all *specified jurisdictions* in Tier 3A with respect to the Covered Group for the Period, until either:

- a) the obligation to eliminate double taxation with respect to the remaining *Amount A relief amount* of that Covered Group is fully allocated; or
- b) the amount allocated with respect to that Covered Group reduces the *adjusted jurisdictional return on depreciation and payroll* for such *specified jurisdiction* to the higher of the Elimination Threshold Return on Depreciation and Payroll of the Covered Group and 40 per cent.

12. The “jurisdictional Tier 3A excess profit” of a *specified jurisdiction* with respect to a Covered Group for a Period is the greater of zero or the amount determined by:

- a) subtracting the higher of the Elimination Threshold Return on Depreciation and Payroll and 40 per cent from the *adjusted jurisdictional return on depreciation and payroll*; and

- b) multiplying the amount calculated in subparagraph (a) by Jurisdictional Depreciation and Payroll.

13. Any obligation to eliminate double taxation with respect to the *Amount A relief amount* with respect to a Covered Group for a Period that remains unallocated after applying paragraphs 6 through 12 is allocated to each *specified jurisdiction* in Tier 3B in proportion to the ratio of the *jurisdictional Tier 3B excess profit* of that *specified jurisdiction* to the sum of the *jurisdictional Tier 3B excess profit* of all *specified jurisdictions* in Tier 3B with respect to the Covered Group for the Period, until either:

- a) the obligation to eliminate double taxation with respect to the remaining *Amount A relief amount* of that Covered Group is fully allocated; or
- b) the amount allocated with respect to that Covered Group reduces the *adjusted jurisdictional return on depreciation and payroll* for such *specified jurisdiction* to the Elimination Threshold Return on Depreciation and Payroll of the Covered Group.

14. The “jurisdictional Tier 3B excess profit” of a *specified jurisdiction* with respect to a Covered Group for a Period is the greater of zero or the amount determined by:

- a) subtracting the Elimination Threshold Return on Depreciation and Payroll from the *adjusted jurisdictional return on depreciation and payroll*; and
- b) multiplying the amount calculated in subparagraph (a) by Jurisdictional Depreciation and Payroll.

15. Notwithstanding paragraph 2(a), the *Amount A relief amount* in a Period allocated to a Jurisdiction that was not a Party to this Convention for the immediately preceding Period shall be calculated as if the *prior unallocated Amount A relief* was not included in the *Amount A relief amount* of the Covered Group for the Period. This paragraph shall not affect the *Amount A relief amount* allocated to any other Jurisdiction.

## **Article 12 – Provision of Relief for Amount A Taxation to Relief Entities**

1. Subject to Article 13(7), a Party that is a *relieving jurisdiction* for a Period with respect to a portion of the *Amount A relief amount* of a Covered Group under Article 11 shall provide relief from double taxation to each *relief entity* identified under Article 13 using one of the following methods:

- a) by making a payment to the *relief entity* in respect of the *relevant portion of the tax paid by the Designated Payment Entity*;
- b) by providing the *relief entity* with a credit in respect of the *relevant portion of the tax paid by the Designated Payment Entity* that:
  - i) is first offset against the tax liability of the *relief entity* in that Party for a fiscal year; and
  - ii) results in a payment to the *relief entity* equal to the amount by which the amount of the credit exceeds the tax liability that is offset in accordance with subdivision (i);
- c) by providing the *relief entity* with a credit in respect of the *relevant portion of the tax paid by the Designated Payment Entity* that is offset against the tax liability of the *relief entity* in the Party for a fiscal year; or

- d) by providing a deduction in respect of the *adjusted Amount A relief amount allocated to the relief entity*, from the income used to calculate the tax liability of the *relief entity* in the Party for the fiscal year.
2. For purposes of paragraph 1, relief from double taxation shall be subject to the domestic law of the Party, applied as if the tax were paid by the *relief entity* and the *Amount A relief amount* to which the tax relates consisted entirely of income arising in the Jurisdiction to which the tax is paid.
3. If the Party grants relief with respect to a Period using a method described in paragraph 1(a) or (b), the Party shall not limit the amount of the payment or credit provided under those paragraphs by the tax payable by the *relief entity* in the fiscal year to the Party.
4. If the Party grants relief with respect to a Period using a method described in paragraph 1(c) or (d):
- a) the Party shall ensure the calculation of the amount of credit or deduction available allows for an excess to occur if there is insufficient tax payable by the *relief entity* in the fiscal year to the Party; and
  - b) where the amount of the credit or deduction granted to the *relief entity* under the method described in paragraph 1(c) or (d) exceeds the amount of tax or income available for offset during the fiscal year in which relief is provided, the Party shall permit the *relief entity* to carry the full amount of the excess forward to at least the following three fiscal years.
5. Subject to Article 13(7), a Party may provide relief pursuant to paragraph 1 in:
- a) the fiscal year of the *relief entity* that includes the last day of the Period of the Covered Group for which the tax liability of the Designated Payment Entity is calculated, in which case, unless the Party opens an audit into the double taxation relief claim, relief must be provided within 90 days of the Party receiving a valid claim for relief; or
  - b) the fiscal year that includes the date that is 18 months after the end of the Period if the Party has a regime requiring payment in instalments toward an expected liability, or an interim tax filing during a fiscal year. Where relief is provided under this subparagraph, once a *relief entity* becomes entitled to relief under the domestic law of the Party, the Party shall allow the *relief entity* to reduce the earliest payments the *relief entity* would be required to make in respect of the instalment or interim tax filing during the fiscal year to reflect the relief granted pursuant to paragraph 1.
6. For purposes of Articles 12 and 13, a Party shall treat an amount of tax paid by a Group Entity in accordance with Article 17 for a Period as an amount of tax paid by the Designated Payment Entity for that Period.
7. For purposes of paragraph 1:
- a) the “relevant portion of the tax paid by the Designated Payment Entity” is the product of:
    - i) the aggregate tax paid by the Designated Payment Entity in accordance with Article 4 that is attributable to the *Amount A relief amount* of the Covered Group allocated to *relieving jurisdictions* that are Parties; and
    - ii) the ratio of:
      - A) the *Amount A relief amount* allocated under Article 13(1) through (5) to the *relief entity*; to
      - B) the *Amount A relief amount* of the Covered Group allocated to all *relieving jurisdictions* that are Parties.

- b) the "adjusted Amount A relief amount allocated to the relief entity" is the product of:
- i) the *Amount A relief amount* allocated under Article 13(1) through (5) to the *relief entity*; and
  - ii) the ratio of:
    - A) the *Amount A relief amount* of the Covered Group reduced by the Amount A Profit of the Covered Group that is attributable under Article 5 to Jurisdictions that are not Parties; to
    - B) the *Amount A relief amount* of the Covered Group.
- c) the term "relief entity" has the meaning assigned to it in Article 13(12)(a).

8. For the purpose of applying paragraph 7 in the case of a *relief entity* in a Party to which Article 11(15) applies for a Period, the calculation of the *Amount A relief amount* of the Covered Group shall not take into account the *prior unallocated Amount A relief* for the Group under Article 11(2)(b).

### **Article 13 – Identification of Relief Entities Entitled to Elimination of Double Taxation**

1. A Party that is identified as a *relieving jurisdiction* with respect to a Covered Group for a Period under Article 11(3) shall identify *relief entities* and allocate its obligation under Article 11(6) through (15) to eliminate double taxation on Amount A Profit among the *relief entities* of the Covered Group in the Party. Subject to paragraph 5, this allocation shall be accomplished by applying paragraphs 2 through 4, in order, on the basis of one of the following measures of profit for the Period:

- a) *excess profit*;
- b) *taxable profit*; or
- c) *accounting profit*.

2. For the purpose of applying paragraph 1, a Party shall provide double taxation relief to the Group Entity with the highest profit determined in accordance with paragraph 1, reducing the amount of that profit by the amount of the *Amount A relief amount* on which relief is provided until one of the below is first satisfied:

- a) the amount of profit is equal to the profit of the Group Entity with the second-highest profit in that Party; or
- b) the Party's obligation to provide double taxation relief is fully satisfied.

3. Where a Party has not fully satisfied its obligation to provide double taxation relief after applying paragraph 2, the Party shall provide double taxation relief to the Group Entity with the highest profit and the Group Entity with the second-highest profit, reducing the amount of such profit by the remaining amount of the *Amount A relief amount* on which relief is provided until one of the below is first satisfied:

- a) the amount of such profit of each of the *relief entities* is equal to the profit of the Group Entity with the third-highest profit in that Party; or
- b) the Party's obligation to provide double taxation relief is fully satisfied.

4. The approach to allocation of relief from double taxation described in paragraph 3 shall apply iteratively to additional Group Entities with profit in that Party, starting with the Group Entity with the next highest profit, until one of the below is first satisfied:

- a) the obligation of the Party to provide double taxation relief has been fully satisfied; or
- b) the profit of all Group Entities that are located or have a Taxable Presence in the Party has been exhausted.

5. To the extent permitted by its domestic law, a Party may use another method to allocate the entitlement to relief from double taxation among Group Entities, if all the Group Entities of a Covered Group that would be *relief entities* with respect to that Party under paragraphs 1 through 4, and all Group Entities in that Party from the same Covered Group to which the entitlement to relief from double taxation is allocated under the other method, consent to such method.

6. To the extent a *relief entity* pays a liability of the Designated Payment Entity for a Period in accordance with Article 17, paragraph 9 does not apply.

7. A *relief entity* shall only be entitled to relief from double taxation for a Period if the *relief entity* makes a compensation payment to the Designated Payment Entity that is equal to the *Amount A compensation payment limit*. To the extent a *relief entity* pays a liability of the Designated Payment Entity for the Period in accordance with Article 17, the *relief entity* shall be considered to have made a compensation payment to the Designated Payment Entity.

8. For purposes of this Article, and subject to paragraph 11, the "Amount A compensation payment limit" of a *relief entity* is equal to the tax paid by the Designated Payment Entity with respect to the portion of the *Amount A relief amount* that is allocated to the *relief entity* under paragraphs 1 through 5.

9. A Party shall disregard a compensation payment for all tax purposes in a Period as follows:

- a) from a *relief entity* to the Designated Payment Entity:
  - i) to the extent that the compensation payment does not exceed the *Amount A compensation payment limit*; and
  - ii) in a case where a *local entity* pays a liability of the Designated Payment Entity in accordance with Article 17 for the Period, only if the Designated Payment Entity makes a compensation payment to the *local entity* that is equal to this liability paid by the *local entity*, and
- b) from the Designated Payment Entity to a *local entity* in accordance with subparagraph (a)(ii).

10. A Party shall ensure that entities of a Covered Group compensate the Designated Payment Entity and *local entities* to the extent prescribed under paragraph 7 and paragraph 9(a) by:

- a) specifically requiring such a payment in its domestic law;
- b) imposing a surcharge equal to:
  - i) in the case of a *relief entity*, the *Amount A compensation payment limit*; and
  - ii) in the case of a Designated Payment Entity in circumstances where its liability is paid by the *local entity* in accordance with Article 17 for the Period, the liability paid by the *local entity* in accordance with Article 17 for the Period; or
- c) taking another measure to the extent necessary to achieve this outcome.

11. A Party may allow for a *relief entity* to agree with the Designated Payment Entity to reduce the *Amount A compensation payment limit* in accordance with its obligations under a *Covered Group's Amount A funding agreement*.

12. The following definitions apply for purposes of this Article:

a) the term "relief entity" means:

- i) a Group Entity of a Covered Group; or
- ii) an incorporated Joint Venture to which Annex B Section 4(14) applies in relation to the Covered Group;

that is entitled to relief from double taxation under this Article from a Party;

b) the term "excess profit" means:

- i) for a *relief entity* that is located in the Party, *entity elimination profit (or loss)* reduced by the product of the Elimination Threshold Return on Depreciation and Payroll of the Covered Group and the sum of *entity depreciation and entity payroll*; or
- ii) for a *relief entity* with a Taxable Presence in the Party, *taxable presence elimination profit or loss* reduced by the product of the Elimination Threshold Return on Depreciation and Payroll of the Covered Group and the sum of *taxable presence depreciation and taxable presence payroll*.

c) the term "taxable profit" means the amount of profit liable to income tax under the domestic law of a Party;

d) the term "accounting profit" means the profit reflected in the financial statements prepared under an Acceptable Financial Accounting Standard (or, if no such statements are prepared, the amount of profit as measured under such accounting standard);

e) the term "local entity" has the meaning assigned to it in Article 17(4)(b);

f) the term "Covered Group's Amount A funding agreement" means a contract between Group Entities of a Covered Group that establishes a legal obligation for a *relief entity* to provide a payment to the Designated Payment Entity for purposes of the Designated Payment Entity meeting its obligations under Article 4 for a Period.

g) the terms "Group Entity" and "Group Entities" include any incorporated Joint Venture to which Annex B Section 4(14) applies in relation to the Covered Group.

13. For purposes of paragraphs 1 through 4 and paragraph 12(b) through (d), where a *relief entity* is an incorporated Joint Venture, the Party shall only take into account the same proportion of the *excess profit*, *taxable profit* or *accounting profit* of the incorporated Joint Venture as the Group's share of profit or loss derived from the Joint Venture.

## PART V – ADMINISTRATION AND CERTAINTY

### SECTION 1 – ADMINISTRATION

#### **Article 14 – Filing Requirements**

1. A Party shall allow the Group Entities of a Covered Group at least nine months and no more than twelve months from the end of a Period to file an Amount A Tax Return and Common Documentation Package.
2. If the *coordinating entity* files the Amount A Tax Return and Common Documentation Package with the *lead tax administration*, then:
  - a) if the filing is done by the time prescribed in the Party of the *lead tax administration*, each Party shall consider the filing obligation of any Group Entity to be satisfied and filed on time; and
  - b) in all other cases, each Party shall consider the filing obligation of any Group Entity to be satisfied as of the date on which the Amount A Tax Return and Common Documentation Package is filed with the *lead tax administration*.

#### **Article 15 – The Amount A Tax Return and the Common Documentation Package**

1. For purposes of this Convention, the “Amount A Tax Return and Common Documentation Package” means a submission containing the information described in paragraph 2 that allows a Party to assess the tax liability of a Designated Payment Entity under the domestic law provisions that give effect to the taxing rights and obligations described in this Convention.
2. The Conference of the Parties shall develop a standard template that will be used for filing the Amount A Tax Return and Common Documentation Package, which shall include the following information concerning the Covered Group:
  - a) the identity of the Covered Group and the Ultimate Parent Entity;
  - b) the identity of the Designated Payment Entity;
  - c) the information needed to compute:
    - i) the amount of income liable to taxation in accordance with this Convention and the tax liability in relation to that income under the domestic laws of each Party implementing this Convention; and
    - ii) the amount of income eligible for relief of double taxation for each Group Entity in each Party under this Convention;
  - d) any other information that the Conference of the Parties agree is necessary to carry out the administration of the taxing rights and obligations described in this Convention;
  - e) the Covered Group’s request for an *advance certainty review* or a *comprehensive certainty review*, as applicable; and

- f) documentation that evidences the *internal control framework* for the Period that enables an assessment of whether the *internal control framework* meets the requirements in Article 19.

### **Article 16 – Streamlined Compliance**

1. If a Designated Payment Entity meets the requirements of paragraph 2 or 3 with respect to a Party for a Period, that Party:

- a) where the Amount A Tax Return and Common Documentation Package is filed in accordance with Article 14, shall treat the Designated Payment Entity as having satisfied all income tax filing obligations in that Party in relation to income liable to tax in accordance with Article 4;
- b) in the case of a Designated Payment Entity that is required to register for income tax purposes in that Party solely because it is liable for tax in accordance with Article 4, shall register the Designated Payment Entity for tax purposes upon receipt of the:
  - i) legal name;
  - ii) address;
  - iii) names and addresses of the directors;
  - iv) name and contact details of authorised representatives;
  - v) the tax identification number or equivalent in its Jurisdiction of tax residence; and
  - vi) incorporation date and Jurisdiction of incorporation
 of the Designated Payment Entity;
- c) shall treat the fiscal year of the Designated Payment Entity as ending on the same day as the Period;
- d) shall consider any income liable to tax in accordance with Article 4 to be derived for income tax purposes on the last day of the Period;
- e) shall not include income liable to tax in accordance with Article 4 in the calculation of income for purposes of a regime that requires payment towards an expected tax liability in instalments during the fiscal year;
- f) shall allow the Designated Payment Entity 18 months from the end of the Period to pay any tax on income liable to tax in accordance with Article 4; and
- g) where the Designated Payment Entity is registered in the Party solely for purposes of tax charged in accordance with Article 4, the Party shall not require the Designated Payment Entity to comply with any domestic notices, registrations, or other requirements that would otherwise be required following the registration for tax purposes in that Party, other than for purposes of tax charged in accordance with Article 4.

2. A Designated Payment Entity meets the requirements of this paragraph with respect to a Party for a Period if the Designated Payment Entity:

- a) has no income liable to tax in the Party other than:



- i) income liable to tax in accordance with Article 4; and
    - ii) income that is subject to a final withholding tax; and
  - b) has not benefitted from a regime in that Party permitting it to utilise income tax attributes of another Group Entity of the Covered Group in the Period.
3. A Designated Payment Entity meets the requirements of this paragraph with respect to a Party for a Period if it is liable to tax in that Party in accordance with Article 4, with no reduction for income tax attributes of other Group Entities, and under a regime where tax is levied independently from other taxes on business profits.
4. Where a Designated Payment Entity for a Period does not meet the requirements of paragraph 2 or 3, income liable to tax in a Party shall be deemed to be derived for income tax purposes by the Designated Payment Entity:
- a) on the last day of the most recently completed fiscal year, if the filing date of the end of year tax return for that year in that Party is after the date prescribed by the Party of the *lead tax administration* for filing the Amount A Tax Return and Common Documentation Package for the Period; or
  - b) the date prescribed by the Party of the *lead tax administration* for filing the Amount A Tax Return and Common Documentation Package for the Period in all other cases.

### **Article 17 – Secondary Liability**

1. A Party may make *relief entities*, *local entities*, or a combination of both *relief entities* and *local entities* liable for a tax imposed in accordance with this Convention and for any administrative penalty, interest or other amount imposed under domestic law in relation to such tax if the Designated Payment Entity fails to meet such liability to that Party for a Period, in whole or in part, within three months of that liability being due. The amount of that liability shall not exceed:
- a) in the case of a *relief entity*, an amount equal to the product of:
    - i) the amount of tax owed by the Designated Payment Entity in the Party in accordance with Article 4, plus any administrative penalties and interest imposed by the Party in accordance with this Convention in relation to that liability for the Period; and
    - ii) the share of the *Amount A relief amount* of the Covered Group allocated to the *relief entity* in accordance with Article 13 for the Period, divided by the *Amount A relief amount* of the Covered Group for the Period.
  - b) in the case of a *local entity* or *local entities* in the Party, the sum of all tax, administrative penalties, interest or other amount imposed under the domestic law of that Party in accordance with this Convention for the Period.
2. Once the three month period described in paragraph 1 has passed, the Party may issue a notification to an Entity to which paragraph 1 applies that requires the payment of outstanding liabilities within a period of not less than 30 days from the date of the notification. Such a notice shall state:
- a) the amounts that remain unpaid;
  - b) the date when the amounts first became payable; and

- c) any rights of appeal under the domestic laws of the Party.
3. A liability of the Designated Payment Entity, a *relief entity* or a *local entity* described in paragraph 1 shall be reduced to the extent that such liability is paid by a Group Entity of the Covered Group.
  4. For purposes of this Article:
    - a) the term “relief entity” has the meaning assigned to it in Article 13(12)(a); and
    - b) the term “local entity” means a Group Entity of a Covered Group that is a resident for tax purposes of, or has a Taxable Presence in, the Party in which the liability described in paragraph 1 arises.

### **Article 18 – Adjustment of Amounts due to Tax Certainty Amendments**

1. A Party shall allow a Covered Group to adjust the amount payable to fulfil a liability that arises in accordance with Article 4 for a Period to reflect an increase or decrease of that Covered Group’s liability for an earlier Period giving effect to a *comprehensive certainty outcome* for the earlier Period. The adjustment shall not reduce the amount payable for a Period below zero.
2. A Party shall allow a *relief entity* to adjust the amount of relief from double taxation due in accordance with Part IV for a Period to reflect an increase or decrease of that *relief entity’s* entitlement to relief from double taxation for an earlier Period giving effect to a *comprehensive certainty outcome* for the earlier Period. The adjustment shall not reduce the relief from double taxation in the Period below zero.

### **Article 19 – Requirement to have an Internal Control Framework**

1. A Party shall require a Covered Group to have an *internal control framework*.
2. For purposes of this Article, the term “internal control framework” means the policies, processes and procedures of a Covered Group, that are endorsed by senior management of the Covered Group and are designed and implemented to ensure the accurate application of:
  - a) Articles 6 and 7;
  - b) the categorisation of revenues and costs for the purpose of applying Annex C Sections 2 and 3;
  - c) the methodology for determining *non-RFS adjusted profit before tax* (as modified by Annex C Section 4); and
  - d) the methodology for determining *non-extractives adjusted profit before tax* (as modified by Annex C Section 4).

### **Article 20 – Amounts Arising Under this Convention**

1. The rate at which tax is imposed by a Party under Article 4 shall not exceed the rate that would have been imposed in accordance with the income tax regime generally applicable in that Party on business profits of an enterprise carried on by a body corporate with the same relevant characteristics.

2. A Party shall take appropriate measures in its domestic law to the extent necessary to effectively enforce compliance in relation to a tax liability imposed by that Party under Article 4.
3. Any interest or administrative penalties due with respect to a tax liability or an obligation related to that tax liability imposed by a Party in accordance with an obligation related to this Convention shall not exceed the interest or administrative penalties that would be due for a similar offence in relation to business profits of an enterprise with the same relevant characteristics under the income tax regime generally applicable in that Party.
4. A Party shall take appropriate measures in its domestic law to ensure the ability of Group Entities to make timely payments where those payments are solely for the purpose of fulfilling their obligations in accordance with this Convention.
5. A Party shall ensure that the conditions in its domestic law regarding the rights of appeal or review, the rules in relation to audits and the statute of limitations in relation to taxation under Article 4 or 17 are not less favourable than the conditions imposed in accordance with the income tax regime generally applicable in that Party on business profits of an enterprise carried on by a body corporate with the same relevant characteristics, except when such conditions arise from an obligation of the Party under this Convention.
6. Notwithstanding paragraph 5, a Party may adopt a provision under its domestic law to extend the statute of limitations on assessment for the duration of any period in which it is restricted from undertaking compliance activities under Article 22(6) or 23(5).

#### ***Article 21 – Currency Conversion Rules for Calculations and Liabilities***

1. A Party shall require that any amount relevant to the application of this Convention in a Period, except those covered by paragraphs 2 through 4, to be calculated in the presentation currency of the Covered Group based on the Acceptable Financial Accounting Standard applicable to the Consolidated Financial Statements of the Covered Group for the Period (or that would have been so reported if the Ultimate Parent Entity prepared Consolidated Financial Statements).
2. Where a Party translates the thresholds in this Convention into its domestic law using a currency other than euro, the Party shall rebase those thresholds annually. The rebased threshold:
  - a) shall be determined, except as provided in paragraph 3, based on the average foreign exchange rate for the month of December determined by the foreign exchange reference rates as quoted by the European Central Bank; and
  - b) shall apply with respect to any Period that begins in the following calendar year.
3. In lieu of the rate determined under paragraph 2(a), a Party may rebase local currency thresholds based on the average foreign exchange rate for the month of December as quoted by the Party's central bank, where either:
  - a) the local currency of a Party is not quoted in the foreign exchange reference rates of the European Central Bank; or
  - b) the Party faces legal or practical impediments to using such exchange rate when setting their own monetary thresholds under domestic legislation.
4. Where the presentation currency of the Consolidated Financial Statements of a Covered Group is different from the currency in which a threshold under this Convention is denominated in a Party's domestic law, the Party shall require amounts to be translated by the Covered Group from the presentation currency

to the currency in which the threshold is denominated based on the average foreign exchange rate for the month of December prior to the commencement of the Period as quoted by the European Central Bank or the Party's Central Bank.

## SECTION 2 – TAX CERTAINTY FRAMEWORK FOR PARTS II TO IV (AMOUNT A)

### **Article 22 – Requests for Certainty over Whether a Group is a Covered Group**

1. The *coordinating entity* of a Group may submit to the *lead tax administration* a request for *scope certainty* for a Period, accompanied by a *scope certainty documentation package* and payment of the applicable *tax certainty user fee*. Such a request may not be submitted until this Convention has been in force for 365 days and must be submitted:

- a) on or after the earlier of:
  - i) the last day of the Period to which the request relates; or
  - ii) where Article 3(2) applies once, in the view of the *coordinating entity*, it has information to demonstrate that the Group is not a Covered Group based on the tests contained in that Article; and
- b) no later than:
  - i) the deadline for filing an Amount A Tax Return and Common Documentation Package for the Period to which the request relates;
  - ii) within 90 days of the Ultimate Parent Entity of the Group or any Group Entity being notified that a Party intends to commence a tax examination to determine whether the Group is a Covered Group for the Period, either by the Party or by the *lead tax administration*; or
  - iii) any further deadline agreed by the Conference of the Parties.

2. The *coordinating entity* of a Group that makes a request for *scope certainty* may also submit to the *lead tax administration* a request for *scope advance certainty*, accompanied by an *advance certainty documentation package* and payment of the applicable *tax certainty user fee*, to apply from a Period specified in the request, with respect to the Group's proposed approach to:

- a) the categorisation of revenues and costs for the purpose of applying Annex C Section 2, and its methodology for determining *non-RFS adjusted profit before tax* (as modified by Annex C Section 4);
- b) the categorisation of revenues and costs for the purpose of applying Annex C Section 3 and its methodology for determining *non-extractives adjusted profit before tax* (as modified by Annex C Section 4); and
- c) any other provisions of this Convention agreed by the Conference of the Parties.

A request for *scope advance certainty* shall also be with respect to aspects of a Group's *internal control framework* under Article 19 relevant to the proposed approach covered by the request.

3. Where the *coordinating entity* of a Group:

- a) makes a request for certainty under this Article meeting the requirements of paragraphs 1 and 2, as applicable, in a format agreed by the Conference of the Parties, and
- b) makes payment to the *lead tax administration* of the applicable *tax certainty user fee*,

the *lead tax administration* shall accept the request on behalf of the *listed parties*. Where a request for certainty does not meet the requirements in subparagraph (a), the *lead tax administration* shall notify the *coordinating entity* within 30 days of the request being filed and require the *coordinating entity* to submit a corrected request or any missing documentation within 60 days following this notification. Where the *coordinating entity* provides an explanation as to why more time is needed, this deadline may be extended by a further 90 days with the agreement of the *lead tax administration*. Where a *coordinating entity* does not submit a corrected request or any missing documentation by this deadline, the *coordinating entity* shall be considered to have withdrawn its request for certainty under Article 30(1)(b). Within 30 days of accepting a request for certainty, the Competent Authority of the Party of the *lead tax administration* shall exchange the request with the Competent Authorities of *listed parties*, together with the documentation package related to that request. Within 30 days of accepting a request for *scope certainty*, the Competent Authority of the Party of the *lead tax administration* shall notify the Competent Authorities of all Parties that are not *listed parties* that a request for *scope certainty* has been accepted.

4. Within 60 days of the notification in the last sentence of paragraph 3, the Competent Authority of any Party may notify the Competent Authority of the Party of the *lead tax administration* that it considers that the Party for which it is Competent Authority should be included as a *listed party* and the reason for this, together with any documents or other evidence to support this reason. The *lead tax administration* may consult with the *coordinating entity* as to whether the Party be included as a *listed party*. Where the *coordinating entity* agrees with the Party's reason, the Party should be included as a *listed party*. Where the *coordinating entity* does not agree with the Party's reason, it shall be required to provide an explanation why this is the case. If, in light of the evidence and explanations provided by the Party and *coordinating entity*, or in the absence of any explanation by the *coordinating entity*, the *lead tax administration* considers that the Party has a reasonable basis for being included as a *listed party*, the *lead tax administration* shall inform the *coordinating entity* that the Party is to be included as a *listed party* notwithstanding the *coordinating entity's* disagreement or lack of response. The Competent Authority of the Party of the *lead tax administration* shall inform the Competent Authority of the Party of the outcome of this process. This consultation between the *lead tax administration* and *coordinating entity* shall be completed within 60 days of the deadline for notifications in this paragraph. Where a Party is included as a *listed party* under this paragraph, within 15 days of informing the Party of this outcome the Competent Authority of the Party of the *lead tax administration* shall exchange with the Competent Authority of the Party any information previously exchanged with *listed parties* under paragraph 3. At the end of the process described in this paragraph, the list of *listed parties* for the Period covered by the request for *scope certainty* shall be considered final.

5. Where:

- a) a request for *scope certainty* is submitted by the filing deadline in paragraph 1(b)(ii); and
- b) the Ultimate Parent Entity of the Group or any Group Entity was notified more than 90 days before the request was submitted that a Party other than the Party mentioned in paragraph 1(b)(ii) intended to undertake enquiries as to whether the Group is a Covered Group,

the Competent Authority of that other Party may, within 60 days of being notified that the request for *scope certainty* is accepted, notify the Competent Authority of the Party of the *lead tax administration* that the Party for which it is Competent Authority is not to be a *listed party* for purposes of the *scope certainty review* for the Period. The *lead tax administration* shall inform the *coordinating entity* that this is the case.

6. Following a notification under paragraph 3 that a request for *scope certainty* has been accepted, all compliance activity with respect to the application of this Convention for the Period covered by the request shall be suspended in all *listed parties*. However, this paragraph shall cease to apply where:

- a) the *coordinating entity* of a Group has withdrawn or is considered under Article 30 to have withdrawn its request for certainty;
- b) a *certainty outcome* agreed pursuant to a *scope certainty review* includes a decision that a Group is a Covered Group for a Period, and the *coordinating entity* of the Group has not submitted an Amount A Tax Return and Common Documentation Package together with a request for *comprehensive certainty* by the deadline specified in Article 29(1)(b); or
- c) either:
  - i) a *certainty outcome* agreed pursuant to a *follow-up scope certainty review* provides that it is not possible to conclude that the Group continues not to be a Covered Group in a Period; or
  - ii) the *coordinating entity* has notified the *lead tax administration* that it withdraws its request for *follow-up scope certainty* and intends to submit a request for *scope certainty* or *comprehensive certainty* by the relevant deadline specified in Annex F Section 1(18); and

the *coordinating entity* of the Group has not submitted either an updated request for *scope certainty* in accordance with paragraph 7, or an Amount A Tax Return and Common Documentation Package together with a request for *comprehensive certainty*, by the relevant deadline specified in Article 29(2)(b) or Annex F Section 1(18), as applicable.

7. The Conference of the Parties may agree a specific approach to undertaking a certainty review, including simplified documentation requirements, where the *coordinating entity* of a Group submits a request for *scope certainty* and the following conditions apply:

- a) the *coordinating entity* has submitted a request for *scope certainty* that meets the requirements in paragraph 3, with the requirement for a *scope certainty documentation package* in paragraph 1 replaced with a *follow-up scope certainty documentation package*;
- b) the *coordinating entity* considers that the Group is a *qualifying extractives group* or a Group that includes one or more *regulated financial institutions*;
- c) the Group has previously been subject to a review by a *scope review panel* on the basis that Article 24(1)(a) applies, which concluded with an agreed *scope certainty outcome* that the Group was not a Covered Group for a Period;
- d) the Group has not been a Covered Group in any Period since the Period mentioned in subparagraph (c); and
- e) the *coordinating entity* specifies in its request for *scope certainty* that the process for a *follow-up scope certainty review* be applied.

This *follow-up scope certainty review* shall consider whether the Group continues not to be a Covered Group. Where as a result of this *follow-up scope certainty review* it is not possible to conclude that the Group continues not to be a Covered Group, the *coordinating entity* may within 90 days of being notified of this outcome submit an updated request for *scope certainty* without the specification in subparagraph (e) that the process for a *follow-up scope certainty review* be applied, accompanied by elements of a *scope certainty documentation package* that were not previously provided in the *follow-up scope certainty documentation package* and payment to the *lead tax administration* of the applicable *tax certainty user fee*.

8. Notwithstanding paragraph 3, a request for *scope certainty* with respect to a particular Period shall not be accepted where such a request was previously submitted for the same Period and that request was subsequently withdrawn or considered to be withdrawn under Article 30. This paragraph shall not prevent a request for *scope certainty* being accepted where:

- a) the *coordinating entity* of a Group notifies the *lead tax administration* that it withdraws its request for *follow-up scope certainty* and within 90 days submits an updated request for *scope certainty* for the same Period in accordance with paragraph 7, accompanied by a *scope certainty documentation package*; or
- b) in circumstance where a *scope certainty review* is to be undertaken by a *scope review panel* under Article 24(1)(f), the *coordinating entity* makes a request that the *scope review panel* also undertake a *scope certainty review*, with payment to the *lead tax administration* of the applicable *tax certainty user fee*, for a Period for which a *scope certainty outcome* was not provided following a *scope certainty review* by the *lead tax administration*, in accordance with Annex F Section 1(19).

9. The Conference of the Parties may agree:

- a) requirements as to the form and content of a request under this Article; and
- b) practical steps to be undertaken by a *lead tax administration* in complying with the provisions of this Article.

### **Article 23 – Requests for Certainty by a Covered Group**

1. The *coordinating entity* of a Group may submit to the *lead tax administration* a request for *comprehensive certainty* for a Period accompanied by payment of the applicable *tax certainty user fee*. Such a request may be submitted:

- a) together with the Amount A Tax Return and Common Documentation Package for the Period;
- b) within 30 days of the *coordinating entity* of the Covered Group or any Group Entity being notified that two or more *affected parties* will commence a multilateral tax examination with respect to the Group's Amount A Tax Return and Common Documentation Package for the Period, in accordance with the provisions of Article 31, either by one or both of the relevant Parties or by the *lead tax administration*; or
- c) by any further deadline agreed by the Conference of the Parties.

2. The *coordinating entity* of a Group that makes a request for *comprehensive certainty* may also submit to the *lead tax administration* a request for *advance certainty*, accompanied by an *advance certainty documentation package* and payment of the applicable *tax certainty user fee*, to apply from a Period specified in the request, with respect to the Group's proposed approach to:

- a) the application of Articles 6 and 7;
- b) the categorisation of revenues and costs for the purpose of applying Annex C Section 2 and its methodology for determining *non-RFS adjusted profit before tax* (as modified by Annex C Section 4);
- c) the categorisation of revenues and costs for the purpose of applying Annex C Section 3 and its methodology for determining *non-extractives adjusted profit before tax* (as modified by Annex C Section 4);

- d) any other provisions of this Convention agreed by the Conference of the Parties.

A request for *advance certainty* shall also be with respect to aspects of a Group's *internal control framework* under Article 19 relevant to the proposed approach covered by the request.

3. Where the *coordinating entity* of a Group makes a request for certainty under this Article meeting the requirements of paragraphs 1 and 2, as applicable, in a form agreed by the Conference of the Parties, and makes payment to the *lead tax administration* of the applicable *tax certainty user fee*, the *lead tax administration* shall accept the request:

- a) on behalf of all Parties in the case of a request for *comprehensive certainty*; or
- b) on behalf of *affected parties* in the case of a request for *advance certainty*.

Where a request for certainty does not meet these requirements, the *lead tax administration* shall notify the *coordinating entity* within 30 days of the request being filed and require the *coordinating entity* to submit a corrected request or any missing documentation within 60 days following this notification. Where the *coordinating entity* provides an explanation as to why more time is needed, this deadline may be extended by a further 90 days with the agreement of the *lead tax administration*. Where a *coordinating entity* does not submit a corrected request or any missing documentation by this deadline, the *coordinating entity* shall be considered to have withdrawn its request for certainty under Article 30(1)(b). The Competent Authority of the Party of the *lead tax administration* shall exchange a request for certainty with the Competent Authorities of *affected parties* by the later of the deadline for the exchange of the Amount A Tax Return and Common Documentation Package and 30 days after the request is accepted. In the case of a request for *advance certainty*, this exchange shall also include the *advance certainty documentation package* related to that request. By the same deadline, the Competent Authority of the Party of the *lead tax administration* shall notify the Competent Authorities of all Parties that are not *affected parties* that a request for *comprehensive certainty* has been accepted.

4. Within 60 days of the notification in the last sentence of paragraph 3, the Competent Authority of any Party may notify the Competent Authority of the Party of the *lead tax administration* that it considers the Party for which it is Competent Authority to be a Party in which the Group has nexus in accordance with Article 8, accompanied by supporting documentation sufficient to demonstrate a reasonable basis for this view. If the *lead tax administration* agrees that the documentation provided is sufficient to demonstrate a reasonable basis for this view, it shall inform the *coordinating entity* that the Party is an *affected party* within 60 days of the deadline for notifications in this paragraph. Where a Party is included as an *affected party* under this paragraph, within 15 days of informing the *coordinating entity* of this outcome, the Competent Authority of the Party of the *lead tax administration* shall exchange with the Competent Authority of the Party any information previously exchanged with *affected parties* under paragraph 3.

5. Following a notification under paragraph 3 that a request for *comprehensive certainty* has been accepted, all compliance activity with respect to the application of this Convention for the Period covered by the request shall be suspended in all Parties. This paragraph shall cease to apply where the *coordinating entity* of a Group has withdrawn or is considered under Article 30 to have withdrawn its request for certainty.

6. Notwithstanding paragraph 3, a request for *comprehensive certainty* with respect to a particular Period shall not be accepted where such a request was previously submitted for the same Period and that request was subsequently withdrawn or considered to be withdrawn under Article 30. Where a *comprehensive certainty review* is to be undertaken by a *review panel* under Article 24(3)(c), this paragraph shall not prevent the *coordinating entity* making a request that the *review panel* also undertake a *comprehensive certainty review*, with payment to the *lead tax administration* of the applicable *tax certainty user fee*, for a Period for which a *comprehensive certainty outcome* was not provided following a *comprehensive certainty review* by the *lead tax administration*, in accordance with Annex F Section 1(19).

7. The Conference of the Parties may agree:



- a) requirements as to the form and content of a request under this Article; and
- b) practical steps to be undertaken by a *lead tax administration* in complying with the provisions of this Article.

#### **Article 24 – Conditions for a Review by a Scope Review Panel or Review Panel**

1. The acceptance of a request for *scope certainty* under Article 22(3) shall result in a review by the *lead tax administration*. However, if at least one of the criteria in subparagraphs (a) through (c) and at least one of the criteria in subparagraphs (d) through (g) is met, then a *scope review panel* of *listed parties* shall be established to undertake a review:

- a) the Group is a *qualifying extractives group* or a Group that includes one or more *regulated financial institutions*, based on information contained in the *scope certainty documentation package*;
- b) the Group has:
  - i) either:
    - A) revenues, exclusive of value added taxes, goods and services taxes, sales taxes, or other similar taxes on consumption, for a *disclosed segment* reported in the Group's Consolidated Financial Statements for the Period in excess of EUR 20 billion; or
    - B) *segment adjusted revenues* for a *disclosed segment* in excess of EUR 20 billion, based on information contained in the *scope certainty documentation package*; and
  - ii) either:
    - A) a *pre-tax profit margin* for a *disclosed segment* in excess of 8 per cent, calculated by dividing the *segment financial accounting profit (or loss)* before tax of the *disclosed segment* by the revenues exclusive of value added taxes, goods and services taxes, sales taxes, or other similar taxes on consumption of the *disclosed segment*, based on information reported in the Group's Consolidated Financial Statements for the Period; or
    - B) a *segment pre-tax profit margin* for a *disclosed segment* in excess of 8 per cent, based on information contained in the *scope certainty documentation package*;
- c) the Group resulted from an *internal fragmentation* as defined in Annex C Section 1(4);
- d) it is the first time the Group has had a request for *scope certainty* accepted for a Period in which a particular criterion in subparagraphs (a) through (c) is met;
- e) all previous reviews undertaken by a *scope review panel* for Periods of the Group in which a particular criterion in subparagraphs (a) through (c) was met ended without an agreed *scope 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 or was considered under Article 30 to have withdrawn its request for certainty before a *scope certainty outcome* was agreed;
- f) in cases where subparagraph (e) does not apply, the review for the most recent Period for which the Group submitted a request for *scope certainty* concluded without an agreed *scope certainty outcome* as 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;
- g) the criteria in subdivisions (i) and (ii) are met:
  - i) there is a period of at least seven years between the first day of the last Period for which a review was undertaken by a *scope review panel* and the first day of the Period for which a request for *scope certainty* is made where one of the circumstances in subparagraphs (a) through (c) applies, and
  - ii) either:
    - A) the Competent Authority of the Party of the *lead tax administration* notifies the Competent Authorities of *listed parties* that a review by a *scope review panel* is proposed by the *lead tax administration*; or
    - B) the Competent Authority of a *listed party* submits to the Competent Authority of the Party of the *lead tax administration* a proposal that a review by a *scope review panel* be undertaken, by the deadline agreed by the Conference of the Parties.

2. The acceptance of a request for *scope advance certainty* under Article 22(3) shall result in a review by a *scope review panel*.

3. The acceptance of a request for *comprehensive certainty* under Article 23(3) shall result in a review by the *lead tax administration*. However, if any of the criteria in subparagraphs (a) through (d) is met, then a *review panel* of *affected parties* shall be established to undertake a review:

- a) it is the first time the Group has had a request for *comprehensive certainty* accepted;
- b) all previous reviews following a request for *comprehensive certainty* 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 uncooperative or non-transparent manner, including by providing inaccurate or incomplete information; or
  - ii) the *coordinating entity* withdrew or was considered under Article 30 to have withdrawn its request for certainty before a *comprehensive certainty outcome* was agreed;
- c) in cases where subparagraph (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 uncooperative or non-transparent manner, including by providing inaccurate or incomplete information; or
- d) at least one of the criteria in subdivisions (i) through (iii) and at least one of the criteria in subdivisions (iv) and (v) are met:

- i) 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;
- ii) based on the approach contained in the Amount A Tax Return and Common Documentation Package submitted by the *coordinating entity* for the Period, any of the following criteria are met:
  - A) at least 10 per cent of the Group's Amount A Profit allocated under Article 5 or 10 per cent of the obligation to provide relief for Amount A taxation under Part IV is allocated to Parties that were not *affected parties* for the most recent Period for which a review was undertaken by a *review panel*;
  - B) at least 10 per cent of the Parties to which Amount A Profit is allocated under Article 5 or which provide relief for Amount A taxation under Part IV were not *affected parties* for the most recent Period for which a review was undertaken by a *review panel*; or
  - C) it is the first Period for which the Group is a *qualifying extractives group* or a Group that includes one or more *regulated financial institutions*;
- iii) the immediately preceding time the *coordinating entity* submitted a request for *comprehensive certainty*, a review was undertaken by the *lead tax administration* and, based on the approach contained in the *comprehensive certainty outcome* agreed pursuant to that request, any of the criteria in subdivisions (ii)(A) through (C) are met;
- iv) the Competent Authority of the Party of the *lead tax administration* notifies the Competent Authorities of *affected parties* that a review by a *review panel* is proposed by the *lead tax administration*;
- v) the Competent Authority of an *affected party* submits to the Competent Authority of the Party of the *lead tax administration* a proposal that a review by a *review panel* be undertaken, by the deadline agreed by the Conference of the Parties.

4. Where a request for *advance certainty* is accepted under Article 23(3), a review shall be undertaken by a *review panel*.

### **Article 25 – Constitution of a Scope Review Panel or Review Panel**

1. Where:

- a) a *scope review panel* is required under Article 24(1); and
- b) paragraph 2 does not apply;

the *scope review panel* shall comprise the *lead tax administration* and tax administrations of six other Parties selected at random from *listed parties* that submit an expression of interest.

2. Where Article 24(1)(a) applies or where a *scope review panel* is required under Article 24(2), a *scope review panel* shall comprise the *lead tax administration* and tax administrations of six other Parties selected at random from *listed parties* that submit an expression of interest as follows:

- a) tax administrations of three *listed parties* in which, based on information provided by the Group:

- i) in the case of a *qualifying extractives group*, the Group has a license in effect to explore for or exploit *minerals, mineraloids or hydrocarbons*; or
    - ii) in the case of a Group that includes one or more *regulated financial institutions*, the Group has employee headcount in *regulated financial institutions* which amounts to at least 5 per cent of total headcount in all the Group's *regulated financial institutions*; and
  - b) tax administrations of three *listed parties* not described in subparagraph (a).
3. Where places on a *scope review panel* established pursuant to paragraph 2 remain unfilled, the tax administrations of other *listed parties* that expressed interest in participating on the panel shall be selected at random to fill the remaining places.
4. Where a Group submits both a request for *scope certainty* and a request for *scope advance certainty* and a *scope certainty review* is to be undertaken by a *scope review panel* established under paragraph 2, reviews pursuant to these requests shall be undertaken by the same panel.
5. Where a *review panel* is required under Article 24(3) or (4), that panel shall comprise the *lead tax administration* and tax administrations of six other Parties selected as follows:
- a) the tax administrations of three other *affected parties* that, based on information in the Amount A Tax Return and Common Documentation Package for the Period, are required to provide relief for Amount A taxation under Part IV, selected at random from the *affected parties* in this category that expressed interest in participating on a panel; and
  - b) the tax administrations of three other *affected parties* that are not the Party of the *lead tax administration* and are not required to provide relief for Amount A taxation under Part IV, that shall comprise:
    - i) the tax administration of one *affected party* that is a *specified low- or middle-income jurisdiction*, selected at random from the *affected parties* meeting these criteria that expressed interest in participating on a panel;
    - ii) the tax administration of one *affected party* that is not a *specified low- or middle-income jurisdiction*, selected at random from the *affected parties* meeting these criteria that expressed interest in participating on a panel; and
    - iii) the tax administration of one *affected party* selected at random from the *affected parties* in this subparagraph that expressed interest in participating on a panel.

Where the *affected parties* that expressed interest in participating on a panel do not include at least one *affected party* in each of subparagraphs (b)(i) and (ii), the unfilled place shall be filled by a tax administration from another *affected party* in subparagraph (b) selected at random from those that expressed interest.

6. Where places on a *review panel* established pursuant to paragraph 5 remain unfilled, the tax administrations of other *affected parties* that expressed interest in participating on the panel shall be selected at random to fill the remaining places.
7. The same panel shall undertake a review where:
- a) a Covered Group submits both a request for *comprehensive certainty* and a request for *advance certainty*;
  - b) a review pursuant to the request for *comprehensive certainty* is to be undertaken by a *review panel*; and

c) the *affected parties* with respect to both requests are the same.

8. The Conference of the Parties shall agree processes for the *lead tax administration* to invite expressions of interest and identify members of a *scope review panel* or *review panel* in accordance with this Article.

## **Article 26 – Certainty Reviews**

1. Where a request for *scope certainty* or *follow-up scope certainty* is accepted under Article 22(3), the *scope review panel* or *lead tax administration* shall undertake a *scope certainty review* or *follow-up scope certainty review* on behalf of all *listed parties* in accordance with Article 37, to determine whether, based on information in the *scope certainty documentation package* or *follow-up scope certainty documentation package* filed by the *coordinating entity*, the Group is not a Covered Group for the Period specified in the request or continues not to be a Covered Group.

2. Where a request for *comprehensive certainty* has been accepted under Article 23(3), the *review panel* or *lead tax administration* shall undertake a *comprehensive certainty review* on behalf of all Parties in accordance with Article 37, to determine whether the Amount A Tax Return and Common Documentation Package filed by the *coordinating entity* reflects a correct application of all relevant aspects of the Convention to the Group or if any changes are required.

3. Where a request for *scope advance certainty* or *advance certainty* is accepted under Article 22(3) or 23(3), the *scope review panel* or *review panel* shall undertake a review on behalf of all *listed parties* or *affected parties* in accordance with Article 37, 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 provisions of the Convention covered by the request for *scope advance certainty* or *advance certainty*, or if any changes are required. The *scope review panel* or *review panel* shall also develop a list of *critical assumptions* which an agreed *advance certainty outcome* shall be subject to, including the Group's proposed *critical assumptions*, as revised or expanded as appropriate and any additional general or targeted *critical assumptions* that may be relevant to the *advance certainty outcome*.

4. If applicable, and where an *advance certainty outcome* does not apply for the Period specified in a request, a review in paragraph 1, 2 or 3 shall also include aspects of the Group's *internal control framework* relevant to matters listed in Article 22(2) or 23(2) to determine whether these aspects are both designed and operating effectively. Where required, the *scope review panel*, *review panel* or *lead tax administration* shall identify and recommend a combination of improvements to these aspects of the *internal control framework*. The Conference of the Parties may agree approaches to undertake a review of aspects of a Group's *internal control framework*.

5. If:

a) a *scope certainty review* or *follow-up scope certainty review* was undertaken under this Article,

b) either:

i) a *scope review panel* reached agreement including all members; or

ii) a *scope certainty review* or *follow-up scope certainty review* was undertaken by the *lead tax administration*; and

c) 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 in Annex F Section 1(30), or if all such written comments are withdrawn following consultation;

the *scope certainty review* or *follow-up scope certainty review* shall conclude with a *scope certainty outcome* in accordance with Article 29(1) or (2), as applicable.

6. If:
- a) a *comprehensive certainty review*, or a phase of a *comprehensive certainty review*, was undertaken under this Article;
  - b) a *review panel* or the *lead tax administration* recommended that *affected parties* agree the application of the Convention in the Amount A Tax Return and Common Documentation Package as filed by the *coordinating entity*; and
  - c) no Competent Authorities submitted written comments that disagreed with this recommendation by the deadline for comments in Annex F Section 1(30), or if all such written comments are withdrawn following consultation;

the *comprehensive certainty review* shall move to the next phase or conclude with a *comprehensive certainty outcome* in accordance with Article 29(3), as applicable.

7. If:
- a) a *comprehensive certainty review*, or a phase of a *comprehensive certainty review*, was undertaken under this Article;
  - b) a *review panel* or *lead tax administration* recommended that *affected parties* agree the application of the Convention in the Amount A Tax Return and Common Documentation Package reflecting specified changes; and
  - c) no Competent Authorities submitted written comments that disagreed with this recommendation by the deadline for comments in Annex F Section 1(30), or if all such written comments are withdrawn following consultation;

the *lead tax administration* shall require the *coordinating entity* to prepare and file a revised Amount A Tax Return and Common Documentation Package within 90 days reflecting these changes. The Conference of the Parties may agree an approach for the *review panel* or *lead tax administration* to confirm that required changes have been correctly reflected in the revised Amount A Tax Return and Common Documentation Package and to require these changes to be correctly reflected if they are not. Once all required changes have been reflected the review shall move on to the next phase or conclude with an agreed *comprehensive certainty outcome* in accordance with Article 29(3), as applicable. Where a review is undertaken in phases, the *review panel* may agree or, if the review is not undertaken by a *review panel*, the *lead tax administration* may decide that a revised Amount A Tax Return and Common Documentation Package shall be required only after the end of the final phase, reflecting specified changes agreed in all phases.

8. If:
- a) a *scope advance certainty review* or *advance certainty review* was undertaken under this Article;
  - b) the *scope review panel* or *review panel* recommended that *listed parties* or *affected parties* agree one or more of the proposed approaches in the *advance certainty documentation package* as filed by the *coordinating entity*; and
  - c) no Competent Authorities submitted written comments that disagreed with this recommendation by the deadline for comments in Annex F Section 1(31), or if all such written comments are withdrawn following consultation;

the *scope advance certainty review* or *advance certainty review* shall conclude with an agreed *advance certainty outcome* in accordance with Article 29(5).

9. If:
- a) a *scope advance certainty review* or *advance certainty review* was undertaken under this Article;
  - b) the *scope review panel* or *review panel* recommended that *listed parties* or *affected parties* agree one or more of the proposed approaches in the *advance certainty documentation package* reflecting specified changes; and
  - c) no Competent Authorities submitted written comments that disagreed with this recommendation by the deadline for comments in Annex F Section 1(31), or if all such written comments are withdrawn following consultation;

the *lead tax administration* shall require the *coordinating entity* to prepare and file a revised *advance certainty documentation package* within 90 days reflecting these changes. The Conference of the Parties may agree an approach for the *scope review panel* or *review panel* to confirm that required changes have been correctly reflected in the revised *advance certainty documentation package* and to require these changes to be correctly reflected if they are not. Once all required changes have been reflected the review shall conclude with an agreed *advance certainty outcome* in accordance with Article 29(5).

10. A *scope review panel*, *review panel* or *lead tax administration* may develop further processes for the purpose of undertaking a review, so long as these are not inconsistent with this Convention or any understanding agreed by the Conference of the Parties, including an understanding on the application of Amount A certainty.

11. The Conference of the Parties shall agree:

- a) the date upon which a review shall be considered to have commenced;
- b) procedures to be followed during a review by a *scope review panel*, *review panel* or the *lead tax administration* consistent with the provisions of this Article and Annex F Section 1;
- c) any arrangements for a *scope review panel*, *review panel* or the *lead tax administration* to consult with tax officials of other *listed parties* or *affected parties*, if necessary, including through the establishment of pools of tax officials with expertise on topics relevant to a review; and
- d) an approach whereby a *comprehensive certainty review* may be undertaken following a phased approach.

12. The provisions of Annex F Section 1 shall apply for the purpose of applying this Article.

### **Article 27 – Determination Panel to Resolve Disagreements**

1. Where a request for certainty is accepted under Article 22(3) or 23(3), and the review under Article 26 pursuant to that request does not result in agreement with respect to one or more issues, those issues shall be resolved by a *determination panel*.

2. Within 30 days after the later of:

- a) the deadline for written comments in Annex F Section 1(30) or (31), as applicable; and
- b) the end of the process described in Annex F Section 1(35);

the Competent Authority of the Party of the *lead tax administration* shall exchange with the Competent Authorities of all *listed parties* or *affected parties* a list of all issues where there is disagreement between members of a *scope review panel* or *review panel*, or where a *listed party* or *affected party* submitted written comments that were not withdrawn. This shall be accompanied by a description of each of the alternative outcomes that have been proposed to each issue, details of the position of each member of the *scope review panel*, *review panel* or *lead tax administration*, or the *listed party* or *affected party* that submitted comments, as relevant, and any written explanation provided by the *coordinating entity* during a review in Article 26 as to the approach taken by the Group. The Competent Authority of any *listed party* or *affected party* may within 90 days of this exchange submit comments to the Competent Authority of the Party 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. Within 30 days of this deadline the Competent Authority of the Party of the *lead tax administration* shall exchange these comments and papers with the Competent Authorities of all *listed parties* or *affected parties*. The Conference of the Parties may agree processes for undertaking these exchanges and for submitting comments.

3. Within 30 days of the deadline for written comments in paragraph 2, the *lead tax administration* shall provide members of the *determination panel* with the following information:

- a) a list of items in a Group's *scope certainty documentation package*, *follow-up scope certainty documentation package*, Amount A Tax Return and Common Documentation Package or *advance certainty documentation package* with respect to which a *scope review panel* or *review panel* did not reach agreement, or where written comments were submitted and not withdrawn, for resolution by the *determination panel*;
- b) for each item, the alternative outcomes for the *determination panel* to choose from, together with any paper prepared by a Competent Authority of a *listed party* or *affected party* explaining its position as to why an outcome would reflect a more correct application of the Convention;
- c) the written comments and any papers submitted under paragraph 2 setting out the positions of Competent Authorities of *listed parties* or *affected parties*, agreeing or disagreeing with these alternative outcomes; and
- d) the *scope certainty documentation package*, *follow-up scope certainty documentation package*, Amount A Tax Return and Common Documentation Package or *advance certainty documentation package* filed by the *coordinating entity* and any changes to these agreed by *listed parties* or *affected parties*, together with any written explanation provided by the *coordinating entity* during a review in Article 26. Where the position taken by the *coordinating entity* is not one of the alternative outcomes supported by the *scope review panel*, *review panel* or *lead tax administration*, or one or more *listed parties* or *affected parties*, the written explanation is provided to the *determination panel* but this position is not one of the alternative outcomes that the *determination panel* can choose from.

4. The *determination panel* shall resolve the specific issues submitted for resolution by choosing between the two or more alternative outcomes supported by the *scope review panel*, *review panel*, *lead tax administration*, or one or more *listed parties* or *affected parties*.

5. The *determination panel* may request clarification of the issues submitted for resolution and alternative outcomes from *listed parties* or *affected parties* through the *lead tax administration*, but no new considerations may be raised. Any clarification provided to the *determination panel* shall also be made available by the Competent Authority of the Party of the *lead tax administration* to the Competent Authorities of *listed parties* or *affected parties*. The *determination panel*:



- a) may not request additional information from the *coordinating entity* or Group Entities; and
- b) 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.

6. The *determination panel* shall endeavour to reach agreement by *consensus* as to the alternative outcome that is chosen by the panel with respect to each issue. Where this is not possible, the process set out in Annex F Section 2 shall be applied to identify the alternative outcome chosen by the *determination panel*.

7. The *determination panel* shall resolve all of the issues submitted to it 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 reviews of a Group for different periods, or different phases of a review, the *determination panel's* decisions shall be delivered in separate compilations corresponding to these reviews or phases.

8. Where:

- a) the issues resolved by the *determination panel* are pursuant to a *scope certainty review* or *follow-up scope certainty review*, the review shall conclude with a *scope certainty outcome* in accordance with Article 29(1) or (2), as applicable;
- b) the issues resolved by the *determination panel* are pursuant to a *comprehensive certainty review*, or a phase of a *comprehensive certainty review*, and no changes are required to the Amount A Tax Return and Common Documentation Package filed by the *coordinating entity*, the review shall move onto the next phase or conclude with a *comprehensive certainty outcome* in accordance with Article 29(3), as applicable;
- c) the issues resolved by the *determination panel* are pursuant to a *comprehensive certainty review*, or a phase of a *comprehensive certainty review*, and specified changes are required to the Amount A Tax Return and Common Documentation Package filed by the *coordinating entity*, the *lead tax administration* shall require the *coordinating entity* to prepare and file a revised Amount A Tax Return and Common Documentation Package within 90 days reflecting these changes. The Conference of the Parties may agree an approach for the *review panel* or *lead tax administration* to confirm that required changes have been correctly reflected in the revised Amount A Tax Return and Common Documentation Package and to require these changes to be correctly reflected if they are not. Once all required changes have been reflected the review shall move onto the next phase or conclude with an agreed *comprehensive certainty outcome* in accordance with Article 29(3), as applicable. Where a review is undertaken in phases, the *review panel* may agree or, if the review is not undertaken by a *review panel*, the *lead tax administration* may decide, that a revised Amount A Tax Return and Common Documentation Package shall be required only after the end of the final phase, reflecting specified changes agreed in all phases;
- d) the issues resolved by the *determination panel* are pursuant to a *scope advance certainty review* or *advance certainty review*, and no changes are required to the *advance certainty documentation package* filed by the *coordinating entity*, the review shall conclude with an *advance certainty outcome* in accordance with Article 29(5); or
- e) the issues resolved by the *determination panel* are pursuant to a *scope advance certainty review* or *advance certainty review*, and specified changes are required to the *advance certainty documentation package* filed by the *coordinating entity*, the *lead tax administration* shall require the *coordinating entity* to prepare and file a revised *advance certainty documentation package* within 90 days reflecting these changes. The Conference of the Parties may agree an approach for the *scope review panel* or *review panel* to confirm that required changes have been correctly reflected in the revised *advance certainty*

*documentation package* and to require these changes to be correctly reflected if they are not. Once all required changes have been reflected the review shall conclude with an agreed *advance certainty outcome* in accordance with Article 29(5).

### **Article 28 – Composition of a Determination Panel**

1. The *determination panel* shall consist of seven individual members, comprising:
  - a) three *independent experts* nominated to the *standing pool*, chosen by random selection from all *independent experts* in the *standing pool*, who are not conflicted to act in such capacity;
  - b) three *government officials* determined as follows:
    - i) in the case of *determination panels* to resolve disagreements arising in a *scope certainty review* or *follow-up scope certainty review*:
      - A) one *government official* nominated by the Party of the *lead tax administration*;
      - B) one *government official* nominated by a Party chosen by random selection from *listed parties* (excluding the Party of the *lead tax administration*) where, based on information provided by the Group:
        - 1) the Group has a license in effect to explore for or exploit *minerals, mineraloids* or *hydrocarbons* if that Group is seeking to apply the exclusion for Adjusted Revenues derived from the sale of *extractive products*; or
        - 2) the Group has an employee headcount in *regulated financial institutions* which amounts to at least 5 per cent of total headcount in all the Group's *regulated financial institutions* for a Group including one of more *regulated financial institutions*; and
      - C) one *government official* (or two if there are no *listed parties* described in clause (B)) nominated by a Party chosen by random selection from the *listed parties*, excluding the Party of the *lead tax administration* or Parties included in clause (B); and
    - ii) in the case of all other *determination panels*:
      - A) one *government official* nominated by the Party of the *lead tax administration*;
      - B) one *government official* nominated by a Party chosen by random selection from the *affected parties* required to provide relief for Amount A taxation with respect to the *relevant group* for the Period based on the information contained in the Amount A Tax Return and Common Documentation Package, which expressed interest to participate in the *determination panel*, excluding the Party of the *lead tax administration*; and
      - C) one *government official* nominated by a Party chosen by random selection from the *affected parties* in which the *relevant group* meets the nexus threshold under Article 8 for the Period, based on the information contained in the Amount A Tax Return and Common Documentation Package, which expressed interest to participate in the *determination panel*, excluding the Party of the *lead tax administration* or Parties included in clause (B).

Where there are no *affected parties* covered in subdivision (ii)(B), the Secretariat of the Conference of the Parties shall invite Parties other than *affected parties* to submit an expression of interest for a *government official* nominated by such Party to participate in the *determination panel* within 30 days. This unfilled seat shall be filled by random selection from among Parties expressing interest. Where no other Parties have expressed interest, any reference to “one” in subdivision (ii)(C) shall be replaced by “two”.

- c) one Chair, who shall be chosen by *consensus* among the six previously selected *independent experts* and *government officials*. The Chair could either be one *independent expert* from the *standing pool*, who is not conflicted to act in such capacity or one *government official* who does not work for or on behalf of Parties already represented in the *determination panel*. 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 if *consensus* is not reached within 30 days from the selection of the sixth individual member.

2. The Secretariat of the Conference of the Parties shall invite *listed parties* or *affected parties* covered by paragraph 1 to submit an expression of interest for a *government official* nominated by a *listed party* or an *affected party* to participate in the *determination panel* within 60 days of the date on which the Competent Authority of the Party of the *lead tax administration* exchanges with the Competent Authorities of all *listed parties* or *affected parties* a list of all issues where there is disagreement under Article 27(2). A *listed party* or 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 *listed party* or *affected party* concerned would make available sufficient resources to ensure this is possible.

3. The provisions of Annex F Section 3 shall apply for the purpose of applying this Article.

### **Article 29 – Certainty Outcomes**

1. Where the *coordinating entity* of a Group submits a request for *scope certainty* and this request is neither withdrawn nor considered to have been withdrawn:

- a) the certainty process in Articles 26 and 27 shall conclude with a *scope certainty outcome* as to whether the Group is a Covered Group for the Period specified in the request; and
- b) if the *scope certainty outcome* in subparagraph (a) contains a conclusion that the Group is a Covered Group for the Period specified in the request, the *coordinating entity* shall be required to file the Group’s Amount A Tax Return and Common Documentation Package for the Period by the later of the filing deadline in Article 14 and 180 days after the *coordinating entity* is informed of this outcome.

2. Where the *coordinating entity* of a Group submits a request for *scope certainty*, this request specifies that the process for a *follow-up scope certainty review* be applied, and this request is neither withdrawn nor considered to have been withdrawn, paragraph 1 shall not apply, and:

- a) the certainty process in Articles 26 and 27 shall conclude with a *scope certainty outcome* as to whether in the Period specified in the request the Group continues not to be a Covered Group; and
- b) if the *scope certainty outcome* in subparagraph (a) contains a conclusion that it cannot be agreed that the Group continues not to be a Covered Group on the basis of the information available, the *coordinating entity* shall be required to file the Group’s Amount A Tax Return and Common Documentation Package for the Period by the later of the filing deadline in Article 14 and 180 days after the *coordinating entity* is informed of this outcome, unless the *coordinating entity* submits an updated request for *scope certainty* under Article 22(7) within

90 days of being notified of this outcome and this updated request is accepted under Article 22(3).

3. Where the *coordinating entity* of a Covered Group submits a request for *comprehensive certainty* and this request is neither withdrawn nor considered to have been withdrawn:

- a) the certainty process in Articles 26 and 27 shall conclude with a *comprehensive certainty outcome* over the application of provisions of this Convention to the Covered Group for a Period; and
- b) any changes to the application of provisions of this Convention included in the Amount A Tax Return and Common Documentation Package for the Period required by that *certainty outcome* shall be implemented by *affected parties* as applicable, notwithstanding any time limits in domestic law.

4. Where:

- a) paragraph 3 applies;
- b) the Group would otherwise be required to source one or more categories of revenue using a different *reliable indicator* to that used in the Amount A Tax Return and Common Documentation Package; and
- c) the *review panel* or *lead tax administration* accepted that the Group does not have access to information for the different *reliable indicator* to be a *reliable indicator* for the Period;

the Group may use the relevant *allocation key* or *allocation keys* applicable to 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 the different *reliable indicator* should have been used by the Group for the Period.

5. Where the *coordinating entity* of a Group submits a request for *scope advance certainty* or *advance certainty*, and this request is neither withdrawn nor considered to have been withdrawn, the certainty process in Articles 26 and 27 shall conclude with an *advance certainty outcome* over one or more of the proposed approaches of the Group specified in Article 22(2) or 23(2). This *certainty outcome* shall apply in one or more Periods determined in accordance with this Article. This *certainty outcome* shall cease to apply at the end of the final Period specified in paragraph 9, or where any *critical assumptions* specified in that *advance certainty outcome* are not met or are no longer met. Notwithstanding this, circumstances where an *advance certainty outcome* ceases to apply do not mean that the approach contained in that *advance certainty outcome* no longer reflects a correct application of the Convention, but that this should be considered as part of a *scope certainty review*, *follow-up scope certainty review*, *scope advance certainty review*, *comprehensive certainty review* or *advance certainty review*, as relevant.

6. Where:

- a) an *advance certainty outcome* is agreed with respect to a Covered Group's request for *advance certainty* relating to the application of Articles 6 and 7; and
- b) the *review panel* accepted that the Covered Group does not have or will not have data available for it to apply the agreed approach for the first Period covered by a request for *advance certainty*;

the *advance certainty outcome* may provide that the Group can use a different *reliable indicator* for this Period. The Group shall be required to collect the information necessary to use the agreed approach for future Periods.

7. Where:

- a) an *advance certainty outcome* is agreed under paragraph 5, and
- b) the agreed *advance certainty outcome* includes a decision that the Group's *internal control framework* with respect to the relevant proposed approach is both designed and operating effectively;

the *advance certainty outcome* shall apply for the Period specified in the request for *scope advance certainty* or *advance certainty* and other Periods set out in paragraph 9.

8. Where:

- a) an *advance certainty outcome* is agreed under paragraph 5, and
- b) the agreed *advance certainty outcome* includes a decision that specified improvements be required to the Group's *internal control framework* with respect to the relevant proposed approach in order for the *outcome* to apply;

the *advance certainty outcome* shall apply for the Period specified in the request for *scope advance certainty* or *advance certainty* and other Periods set out in paragraph 9, on condition that the *coordinating entity* demonstrates that the specified improvements have been made and this is confirmed as part of a *scope certainty review* or *comprehensive certainty review*.

9. The first time a Group makes a request for *scope advance certainty* or *advance certainty* over a particular aspect of the Convention, an *advance certainty outcome* shall be granted for all Periods of the Group ending within 36 months of the start of the Period specified in the request. For the subsequent requests, the *scope review panel* or *review panel* may recommend extending this period to 60 months. Where paragraph 8 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 *scope advance certainty* or *advance certainty*, the Periods that can be covered by an *advance certainty outcome* continues to be calculated from the Period specified in the request.

10. The *lead tax administration* shall require the *coordinating entity* of a Group to notify it where the *coordinating entity* anticipates or becomes aware that one or more agreed *critical assumptions* specified in an *advance certainty outcome* are no longer met. The Competent Authority of the Party of the *lead tax administration* shall exchange this notification with the Competent Authorities of *listed parties* or *affected parties*, as relevant.

11. The Conference of the Parties may agree:

- a) processes to confirm that changes required as a result of a *certainty outcome* are correctly taken into account by a Group; and
- b) processes for *affected parties* to implement changes required as a result of an agreed *comprehensive certainty outcome*, including the applicable deadline.

### **Article 30 – Withdrawal of a Request for Certainty**

1. A request for certainty that has been submitted under Article 22 or 23 shall be withdrawn or considered to have been withdrawn by the *coordinating entity* of a Group if:

- a) the *coordinating entity* notifies the *lead tax administration* that it withdraws its request for certainty;

- b) the request was not in the correct format or did not contain the required content set out in an agreement of the Conference of the Parties, and the *coordinating entity* did not correct this by the deadline in Article 22(3) or 23(3);
- c) the *scope review panel*, *review panel* or the *lead tax administration* under Article 26 determines that:
  - i) the *coordinating entity* has been persistently late in providing information without explanation, or has acted in an uncooperative or non-transparent manner, including by providing inaccurate or incomplete information;
  - ii) the behaviour described in subdivision (i) has not been addressed by the *coordinating entity*; and
  - iii) certainty cannot be provided in these circumstances;
- d) the outcomes of a review under Article 26, taking into account any decisions of a *determination panel* under Article 27, require changes:
  - i) to the application of provisions of this Convention in the Amount A Tax Return and Common Documentation Package filed by the Covered Group; or
  - ii) to a proposed approach of a Group contained in a request for *scope advance certainty* or *advance certainty*; and

the *coordinating entity* of the Group does not agree to such changes; or
- e) after a *coordinating entity* is notified that a *comprehensive certainty outcome* is agreed, a Group Entity submits a tax return in any Party with respect to the same Period, that is inconsistent with that *comprehensive certainty outcome*.

2. Where under paragraph 1 the *lead tax administration* received written notification from the *coordinating entity* of a Group that a request for certainty is withdrawn, or where the *coordinating entity* is considered to have withdrawn a request, the Competent Authority of the Party of the *lead tax administration* shall within 30 days exchange a notification that this has occurred, with:

- a) the Competent Authorities of all Parties, where a request for *scope certainty* was submitted under Article 22(1) or a request for *comprehensive certainty* was submitted under Article 23(1);
- b) the Competent Authorities of *listed parties*, where a request for *scope advance certainty* was submitted under Article 22(2); or
- c) the Competent Authorities of *affected parties*, where a request for *advance certainty* was submitted under Article 23(2).

3. Where a *coordinating entity* withdraws or is considered to have withdrawn a request for *scope certainty* or a request for *comprehensive certainty*, 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 Party of the *lead tax administration*, in the course of a review under Article 26;
- b) a Party from undertaking any domestic compliance activity permitted under its domestic law;

- c) a Party from allowing a Group Entity to make use of remedies permitted under its domestic law; or
- d) the *coordinating entity* submitting a request for *scope certainty* or *comprehensive certainty* with respect to the application of this Convention to the Group for a subsequent Period.

### **Article 31 – Tax Examinations Where a Request for Certainty is not made, or is Withdrawn or Considered to have been Withdrawn**

1. Where a request for certainty for a Period is not submitted under Article 22(1)(a) or 23(1)(a), or where a request is submitted and is subsequently withdrawn or considered to have been withdrawn under Article 30, a Party may undertake a tax examination of the Group as permitted under its domestic law.

2. In accordance with Article 37, two or more Parties may cooperate in undertaking a tax examination in paragraph 1 on a multilateral basis. The Competent Authorities of Parties participating in a multilateral tax examination under this paragraph shall agree the scope and procedures for undertaking the tax examination.

3. Before:

- a) a tax examination in paragraph 2 commences; or
- b) in circumstances where a Group has not submitted an Amount A Tax Return and Common Documentation Package for a Period, any Party commences a tax examination to determine whether the Group is a Covered Group for the Period;

notice shall be given to the *coordinating entity* or to a Group Entity through a process agreed by the Conference of the Parties.

### **Article 32 – Definitions**

For purposes of this Part and Annex F:

- a) the term “advance certainty” means certainty provided by *affected parties* to a Covered Group with respect to its proposed approach to applying one or more provisions of the Convention listed in Article 23(2), for a number of Periods commencing with the Period specified in a request submitted under that Article;
- b) the term “advance certainty documentation package” 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 Article 22(2) or 23(2), which corresponds with the format and content agreed by the Conference of the Parties;
- c) the term “advance certainty outcome” means an agreed outcome of a *scope advance certainty review* or *advance certainty review* which is binding on *listed parties* or *affected parties* for a specified number of Periods subject to all *critical assumptions* continuing to be met;
- d) the term “advance certainty review” means a review under Article 26 pursuant to a request for *advance certainty*, including the resolution of disagreements under Article 27;

- e) the term “affected party”, with respect to a Covered Group for a Period, means:
- i) a Party whose tax administration is the *lead tax administration*;
  - ii) a Party;
    - A) in which the Group has nexus in accordance with Article 8; or
    - B) that is a *specified jurisdiction* for purposes of Part IV

on the basis of information contained in the Amount A Tax Return and Common Documentation Package;
  - iii) a Party that has notified the *lead tax administration* asserting that it considers itself to be a Party in which the Group has nexus in accordance with Article 8 accompanied by relevant supporting documentation sufficient to demonstrate a reasonable basis for this view;
  - iv) a Party not in subdivision (ii) or (iii);
    - A) in which the Group has nexus in accordance with Article 8; or
    - B) that is a *specified jurisdiction* for purposes of Part IV;

identified in the course of a *comprehensive certainty review*;
  - v) for purposes of an *advance certainty review*, any Parties not in subdivisions (i) through (iv) that are identified as an *affected party* by the *coordinating entity* of a Group in its request for *advance certainty*; and
  - vi) other Parties determined pursuant to a process agreed by the Conference of the Parties.

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 in accordance with Article 4. For purposes of subparagraph (e)(iii), relevant supporting documentation includes that set out in Annex F Section 4.

- f) the term “certainty outcome” means a *scope certainty outcome*, an *advance certainty outcome* or a *comprehensive certainty outcome*;
- g) the term “comprehensive certainty” means certainty provided by *affected parties* to a Covered Group with respect to its application of provisions of the Convention as reflected in the Amount A Tax Return and Common Documentation Package for a Period specified in a request under Article 23(1);
- h) the term “comprehensive certainty outcome” means an agreed outcome of a *comprehensive certainty review* which applies for the Period specified in the request for *comprehensive certainty* and is binding on all Parties subject to the provisions of Article 30;
- i) the term “comprehensive certainty review” means a review under Article 26 pursuant to a request for *comprehensive certainty*, including the resolution of disagreements under Article 27;
- j) the term “coordinating entity” means the Designated Payment Entity of a Group or other Group Entity designated to undertake activities described in this Part for a Period;



- k) the term “consensus” means agreement, characterised by explicit support or the absence of objection from all members concerned;
- l) the term “critical assumption” means any fact (whether or not within control of the Group) related to the Group, a third party, an industry, or business and economic conditions, the continued existence of which is material to the granting of an *advance certainty outcome*, agreed as part of an *advance certainty review* or *scope advance certainty review*;
- m) the term “determination panel” means a panel established in accordance with the approach in Article 28 to resolve disagreements arising from a review under Article 26;
- n) the term “follow-up scope certainty” means certainty provided by *listed parties* to a Group with respect to whether the Group continues not to be a Covered Group for a Period specified in a request submitted under Article 22(1), in circumstances where the conditions in Article 22(7) are met;
- o) the term “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 agreed by the Conference of the Parties;
- p) the term “follow-up scope certainty review” means a review under Article 26 pursuant to a request for *follow-up scope certainty*, including the resolution of disagreements under Article 27;
- q) the term “lead tax administration” means the tax administration of a Party determined for each Period by the subdivisions below:
  - i) the *lead tax administration* is the tax administration of the Party in which the Designated Payment Entity of a Group is resident for tax purposes. If the Designated Payment Entity of a Group is transparent for tax purposes in the Party where it is organised, it shall be treated for purposes of this Part as resident in that Party;
  - ii) where a Group has a significant connection to another Party, the *coordinating entity* of the Group, the tax administration mentioned in subdivision (i) and the tax administration of the other Party may agree that the tax administration of the other Party is the *lead tax administration*. For purposes of this subdivision, a Group has a significant connection to:
    - A) the Party in which the Group had the highest average unrelated-party revenue in the Period and the four immediately preceding Periods;
    - B) the Party in which the Group had the highest average tangible fixed assets in the Period and the four immediately preceding Periods;
    - C) the Party in which the Group had the highest average number of employees located in the Period and the four immediately preceding Periods; or
    - D) the Party whose tax administration was most recently the *lead tax administration of the Group*;
  - iii) if the Designated Payment Entity of a Group is resident for tax purposes in a Jurisdiction that does not have a tax administration, the *lead tax administration* is the tax administration in the Party in which the Group had the highest combined average of:
    - A) the average percentage of the Group’s total number of employees; and

B) the average percentage of the Group's unrelated party revenue;

in the Period and the four immediately preceding Periods. Notwithstanding this, where a Group has a significant connection to another Party, the *coordinating entity* of the Group, this tax administration, and the tax administration of the other Party may agree that the tax administration of the other Party is the *lead tax administration*;

- iv) if the Designated Payment Entity of a Group is resident for tax purposes in two Jurisdictions, the 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 Jurisdictions that are party to that tax treaty, 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 Jurisdiction for purposes of its claiming benefits provided by the tax treaty, or where no applicable tax treaty exists:
  - A) if both Jurisdictions are Parties, the Competent Authorities of the two Parties shall mutually agree which should be treated as the Jurisdiction of residence for the purpose of applying subdivision (i);
  - B) if only one of the two Jurisdictions is a Party, subdivision (i) applies as if the Designated Payment Entity of the Group is resident in that Jurisdiction only; and
  - C) if neither of the two Jurisdictions is a Party, subdivision (iii) applies;
- v) the Conference of the Parties may agree circumstances in which other tax administrations may be the *lead tax administration*;
- r) the term "listed party" means:
  - i) a Party whose tax administration is the *lead tax administration*;
  - ii) a Party included on a list provided by the *coordinating entity* of a Group and from which *scope certainty* or *follow-up scope certainty* is requested;
  - iii) a Party added to this list by the *lead tax administration*; and
  - iv) a Party determined pursuant to a process agreed by the Conference of the Parties;

but shall not include a Party that notifies the *lead tax administration* that it is not to be a *listed party* for a Period under the process in Article 22(5);
- s) the term "review panel" means the panel of tax administrations constituted under Article 25 to undertake an *advance certainty review* or *comprehensive certainty review*;
- t) the term "scope advance certainty" means certainty provided by *listed parties* to a Group with respect to its proposed approach to applying one or more provisions of the Convention listed in Article 22(2), for a number of Periods commencing with the Period specified in a request submitted under that Article;
- u) the term "scope advance certainty review" means a review under Article 26 pursuant to a request for *scope advance certainty*, including the resolution of disagreements under Article 27;

- v) the term “scope certainty” means certainty provided by *listed parties* to a Group with respect to whether the Group is a Covered Group for a Period specified in a request submitted under Article 22(1);
- w) the term “scope certainty documentation package” means a package of documents and information to reflect the application of provisions of the Convention concerning whether a Group is a Covered Group for a Period, which corresponds with the format and content agreed by the Conference of the Parties;
- x) the term “scope certainty outcome” means an agreed outcome of a *scope certainty review* or *follow-up scope certainty review* which applies for the Period specified in the request for *scope certainty* and is binding on *listed parties* subject to the provisions of Article 30;
- y) the term “scope certainty review” means a review under Article 26 pursuant to a request for *scope certainty*, including the resolution of disagreements under Article 27;
- z) the term “scope review panel” means the panel of tax administration constituted under Article 25 to undertake a *scope advance certainty review*, *scope certainty review* or *follow-up scope certainty review*;
- aa) the term “specified low- or middle-income jurisdiction” means those Parties classified by the World Bank as a low- or middle-income economies by reference to *gross national income* per capita, calculated using the World Bank Atlas method, based on the most recent publicly available data released by the World Bank prior to the first day of the relevant Period, excluding Parties that are members of the Organisation for Economic Cooperation and Development, or are members of the Group of Twenty (G20) on the first day of the relevant Period;
- bb) the term “tax certainty framework” means the process for providing Groups with certainty where requested under Article 22 or 23;
- cc) the term “tax certainty user fee” refers to an amount agreed by the Conference of the Parties, payable by a *coordinating entity* to the *lead tax administration* together with a request for certainty under Article 22 or 23.

## SECTION 3 – TAX CERTAINTY FOR ISSUES RELATED TO AMOUNT A

### **Article 33 – Mutual Agreement Procedure**

1. Where a member of a Covered Group that is resident in one of the *covered jurisdictions* to a *covered tax agreement* as defined therein considers that the actions of one or both of the *covered jurisdictions* result or will result for that member of a Covered Group in taxation connected with a *related issue* not in accordance with the provisions of that *covered tax agreement*, that member of a Covered Group may, irrespective of the remedies provided by the domestic law of those *covered jurisdictions*, present its case to the *MAP competent authorities* of both *covered jurisdictions*. The case must be presented with a written statement that the member of a Covered Group considers that the case involves taxation connected with a *related issue*. The case must be presented within three years from the first notification of the action resulting in taxation connected with a *related issue* not in accordance with the provisions of the *covered tax agreement*.

For purposes of this paragraph, where different members of the Covered Group affected by the same *related issue* covered under a provision based on or equivalent to Article 9 of the OECD Model or the UN

Model contained in a *covered tax agreement*, present separate cases under paragraph 1 to the *MAP competent authority* of each *covered jurisdiction*, both cases are deemed to be presented to the *MAP competent authorities* of both *covered jurisdictions*.

2. A *MAP competent authority* shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the *MAP competent authority* of the other *covered jurisdiction*, with a view to the avoidance of taxation which is not in accordance with the *covered tax agreement*. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the *covered jurisdictions*.

3. The *MAP competent authorities* may communicate with each other directly for the purpose of reaching an agreement in the sense of paragraphs 2 and 4.

4. The *MAP competent authorities* of the *covered jurisdictions* shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of provisions of the *covered tax agreement* that are covered in the definition of “related issue” under Article 34(1).

5. With respect to this Article:

- a) Except to the extent that the *covered jurisdictions* mutually agree otherwise, the provisions of paragraphs 1 and 2 shall not apply with respect to the presentation of a mutual agreement procedure case concerning taxation connected with a *related issue* and not in accordance with the provisions of a *covered tax agreement* where that *covered tax agreement* provides that a mandatory binding dispute resolution mechanism, such as an arbitration panel or similar body, is required to be set up, upon the request of the member of the Covered Group or automatically, after a set time period to resolve unresolved issues arising from a mutual agreement procedure case or where the presentation of that mutual agreement procedure case is also possible under the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (or a domestic legislation implementing the same), the Convention on the elimination of double taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC), or any of their amending or succeeding instruments or acts.
- b) Notwithstanding paragraphs 1 through 3, where a member of a Covered Group may present a case pursuant to the mutual agreement procedure provisions of a *covered tax agreement*, the mechanism provided for by Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (or a domestic legislation implementing the same), the Convention on the elimination of double taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC), or any of their amending or succeeding instruments or acts, that member of a Covered Group may, subject to subparagraph (a), at its option, present a case pursuant to those provisions instead of paragraph 1. In such a case, paragraphs 1 through 3 shall not affect the application of the mutual agreement procedure under such provisions.
- c) Subject to subparagraph (a), where a mutual agreement procedure case was previously presented by a member of a Covered Group to a *MAP competent authority* pursuant to the mutual agreement procedure provisions of the *covered tax agreement*, the mechanism provided for by Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (or a domestic legislation implementing the same), the Convention on the elimination of double taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC), or any of their amending or succeeding instruments or acts, paragraph 1 shall not be available with respect to the presentation of the same case by the same member of a Covered Group, unless the previously presented case was submitted to only one of the *MAP competent authorities* and was rejected by such *MAP competent authority*.

- d) Subject to subparagraph (a), where a mutual agreement procedure case was previously presented by a member of a Covered Group pursuant to paragraph 1 and the same member of the Covered Group later presents the case pursuant to the mutual agreement procedure provisions of the *covered tax agreement*, the Convention on the elimination of double taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC), or any of their amending or succeeding instruments or acts, consideration of the case pursuant to paragraph 1 would be suspended and Article 35 would not apply to that case. Nothing in this Article prevents the *MAP competent authorities* of the *covered jurisdictions* from considering such newly presented case where the previously presented case pursuant to paragraph 1 was rejected on the grounds that issue(s) involved were not *related issues*.
- e) Subject to subparagraph (a), the submission of a complaint as provided under Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (or a domestic legislation implementing the same) or any of its amending or succeeding instruments or acts of European Union law, shall put an end to any ongoing mutual agreement procedure with respect to the same case that was initiated pursuant to paragraph 1.

### **Article 34 – Definitions**

1. For purposes of Section 3 of Part V, the term “related issue” means an issue that is covered under the provisions of a *covered tax agreement* based on or equivalent to Article 5, 7 or 9 of the OECD Model or the UN Model, including a question concerning the applicability of these provisions, and that has:

- a) an impact on the elimination of double taxation with respect to Amount A; or
- b) a material impact on the Elimination Profit (or Loss) or Amount A Profit of a *covered jurisdiction*.

2. For purposes of paragraph 1, an issue is considered to have an impact on the elimination of double taxation with respect to Amount A where it concerns an adjustment asserted or assessment raised by a *covered jurisdiction* with respect to a member of a Covered Group resulting in:

- a) a change in the *covered jurisdictions* required to provide relief for Amount A taxation for that Covered Group under Article 11(6) through (15); or
- b) a change in the Tier(s) for the Allocation of the obligation to eliminate double taxation with respect to Amount A Profit of a *covered jurisdiction* for that Covered Group under Article 11(6) through (15);

if such adjustment or assessment is included in full in the Elimination Profit (or Loss) of that Covered Group for that *covered jurisdiction* for the Period during which the adjustment or assessment is asserted or raised, irrespective of how the adjustment or assessment is recorded in the Elimination Profit (or Loss) of that Covered Group for that *covered jurisdiction*.

3. For purposes of paragraph 1, an issue is considered to have a material impact on the Elimination Profit (or Loss) or Amount A Profit of a *covered jurisdiction* where the aggregate quantum of all adjustments asserted or assessments raised by that *covered jurisdiction* with respect to members of that Covered Group in a Period, as reflected in the first notifications for such adjustments or assessments by that *covered jurisdiction*, is an amount greater than:

- a) EUR 3 million with respect to the first three Periods that follow the entry into effect of this Convention in accordance with Article 49; and

- b) EUR 1.5 million with respect to subsequent Periods.
4. For purposes of this Article:
- a) where adjustments or assessments concerning an issue have been asserted or raised with respect to a member of a Covered Group in any previous Period and a mutual agreement procedure case concerning this issue for that Period remains unresolved for more than two years beginning on the start date for that case calculated on the basis of the rules provided in Article 35(3) through (7), notwithstanding paragraph 3, the same issue with respect to the same member of a Covered Group for the current Period shall be considered a “related issue”; and
- b) while calculating the aggregate quantum of adjustments or assessments under paragraph 3, an adjustment or assessment that is considered by a *covered jurisdiction* to be asserted or raised under the provisions of a *covered tax agreement* based on or equivalent to Articles 10, 11 and 12 of the OECD Model or the UN Model or Article 12A of the UN Model, but that involves questions concerning the applicability of provisions of a *covered tax agreement* based on or equivalent to Article 5, 7 or 9 of the OECD Model or the UN Model covered under paragraph 1, shall be included in that aggregate quantum only if it results in a Withholding Tax Upward Adjustment or a *withholding tax downward adjustment* under Annex B Section 4(12)<sup>6</sup>.
5. Notwithstanding paragraphs 1 through 4, the term “related issue” shall not include:
- a) an issue that concerns an adjustment to the profits of a transaction:
- i) between members of a Group that are *extractives entities* or *regulated financial institutions*;
- ii) that only involves an *extractives segment* or a *regulated financial institution segment*;
- iii) between members of a Group that is not a Covered Group in a Period under Annex C Section 5(6) or (7);
- iv) between members of a Group that are located in an *autonomous domestic business jurisdiction*;
- v) where Annex C Section 4 is applicable, between a *segment entity* of an *extractives segment* and a *segment entity* of a *disclosed segment* that is not a *covered segment*;
- vi) where Annex C Section 4 is applicable, between a *segment entity* of a *regulated financial institution segment* and a *segment entity* of a *disclosed segment* that is not a *covered segment*;
- vii) where Annex C Section 4 is applicable, between *segment entities* of *disclosed segments* that are not part of *covered segments*;
- viii) where Annex C Section 4 is applicable, between *segment entities* of a *disclosed segment* that is not a *covered segment* in a Period under Annex C Section 5(6) or (7) as modified by Annex C Section 4;

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<sup>6</sup> Brazil, Colombia and India have expressed objections to paragraph 4(b) which extend also to corresponding aspects of paragraph 1.

- ix) where Annex C Section 4 is applicable, between *segment entities* that are located in *autonomous domestic business jurisdictions*; or
- x) involving *defence revenues*,

other than any adjustment that would lead to a *disclosed segment* becoming or not remaining a *covered segment* or any adjustment that would lead to a Group or a *disclosed segment* failing the test under Annex C Section 5(6) or (7) (as modified by Annex C Section 4 where Annex C Section 4 is applicable) for the Period in which the adjustment or assessment is asserted;

- b) an issue that concerns an adjustment to the profits attributed to a permanent establishment of a member of a Group (including the question of whether such a permanent establishment exists):
  - i) that is a *regulated financial institution*;
  - ii) that is an *extractives entity*;
  - iii) that only affects revenue reported in an *extractives segment* or a *regulated financial institution segment*;
  - iv) where Annex C Section 4 is applicable, that is an adjustment to the profits attributed to a permanent establishment of an Entity that is not a member of a *covered segment*; or
  - v) where the transaction concerned involves *defence revenues*;

other than any adjustment that would lead to a *disclosed segment* becoming or not remaining a *covered segment* for the Period in which the adjustment or assessment is asserted; or

- c) an issue that concerns an adjustment asserted or assessment raised involving any *extractives revenues*, where the adjustments or assessments are pursuant to a *special tax regime*. For purposes of this subparagraph, the term “special tax regime” means any statute or regulation in a *covered jurisdiction* with respect to a tax described in a provision of a *covered tax agreement* that is based on or equivalent to Article 2 of the OECD Model or the UN Model that results in an additional tax liability connected to *extractives revenues* apart from the corporate income tax applicable.

6. For purposes of Section 3 of Part V:

- a) the term “legally bound” means circumstances in which a *MAP competent authority* must adhere to a court or administrative tribunal decision or to the outcome of another process related to a court or administrative tribunal procedure and required to be completed in advance of that court or administrative tribunal procedure, by way of law or administrative guidance issued under law that is binding on a *MAP competent authority* (or *authorities*) as a consequence, regardless of whether the *MAP competent authority* was itself a party to the procedure that resulted in the decision or outcome;
- b) the term “covered tax agreement” means an agreement of which one of the purposes is the avoidance of double taxation with respect to taxes on income (whether or not other taxes are also covered) that is in force between two or more:
  - i) Parties; and/or
  - ii) jurisdictions or territories to which this Convention applies pursuant to a declaration by a Party pursuant to Article 42(1);

- on the date of the adjustment or assessment that is the subject of a request for mutual agreement procedure made under Article 33 or covered by the dispute resolution procedure under Article 35, including all amendments or modifications made to such agreement or its application through any subsequent protocol or another agreement, including the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, where applicable;
- c) Notwithstanding subparagraph (b), the term “covered tax agreement” does not include:
    - i) Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, the Convention on the elimination of double taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC), or any of their amending or succeeding instruments or acts of European Union law; or
    - ii) an arrangement between a jurisdiction or territory described in Article 2(aa)(ii) and the State that is responsible for its international relations, or between two or more such jurisdictions or territories for which the same State is responsible;
  - d) the term “covered jurisdiction” means a party to a *covered tax agreement* or a jurisdiction that is otherwise included in the territorial scope of such an agreement; and
  - e) the term “MAP competent authority” means a competent authority as defined under the relevant *covered tax agreement* applicable to the *related issue* concerned.

### **Article 35 – Resolution of Disputes with Respect to Related Issues**

1. a) Where,
  - i) a member of a Covered Group has presented a case to the *MAP competent authority* of a *covered jurisdiction* pursuant to the mutual agreement procedure provisions of a *covered tax agreement*, or the provisions of Article 33, on the basis that the actions of one or both of the *covered jurisdictions* have resulted for that member of a Covered Group in taxation not in accordance with the provisions of that *covered tax agreement*, and
  - ii) the *MAP competent authorities* of the *covered jurisdictions* are unable to reach an agreement to resolve that case pursuant to the mutual agreement procedure within a period of two years beginning on the start date referred to in paragraph 6 or 7, as the case may be (unless, prior to the expiration of that period the *MAP competent authorities* of the *covered jurisdictions* have agreed to a different time period and have notified the member of a Covered Group that presented the case of such agreement),

any unresolved *related issues* arising from the mutual agreement procedure case shall, if the member of a Covered Group requests, be submitted to a dispute resolution panel in the manner described in this Article (as supplemented by any rules or procedures agreed upon by the *MAP competent authorities* of the *covered jurisdictions* pursuant to the provisions of Annex G Section 2).
- b) The dispute resolution panel mechanism provided in this Article shall also apply to resolve any disagreement between *covered jurisdictions* regarding whether an issue is a *related issue*.



- c) A request that unresolved *related issues* arising from a mutual agreement procedure case be submitted to a dispute resolution panel must be made in writing by the member of a Covered Group that presented the case to the *MAP competent authority* of its *covered jurisdiction* of residence. The member of a Covered Group that makes a request for a dispute resolution panel must at the same time send a copy of the request and all supporting documentation to the *MAP competent authority* of the other *covered jurisdiction*. The request should contain sufficient information to identify the case and must be accompanied by:
- i) a written statement by all Entities of the Covered Group directly affected by the case that no decision on the same *related issues* has already been rendered by a court or administrative tribunal of the *covered jurisdictions*;
  - ii) a written statement by all Entities of the Covered Group directly affected by the case indicating whether one or more of the same *related issues* is pending before a court or administrative tribunal of either *covered jurisdiction*;
  - iii) a written undertaking to notify the *MAP competent authorities* immediately upon the initiation by an Entity of the Covered Group directly affected by the case, following the request for a dispute resolution panel, of proceedings before a court or administrative tribunal of either *covered jurisdiction* with respect to one or more of the same *related issues*;
  - iv) a written statement regarding confidentiality, as required in Annex G Section 4(3), from the Entities of the Covered Group directly affected by the case and their authorised representatives or advisors;
  - v) a written statement by the member of a Covered Group that describes why the issue in question is a *related issue*; and
  - vi) a written confirmation that the member of a Covered Group sent the request and all accompanying documentation (or a copy thereof) to the *MAP competent authorities* of both *covered jurisdictions*.
- d) Within ten days after the receipt of the request that unresolved *related issues* be submitted to a dispute resolution panel, a *MAP competent authority* that receives a request without a confirmation that it was also sent to the other *MAP competent authority* shall send a copy of that request and the accompanying documentation to the other *MAP competent authority*.

2. For purposes of this Article:

- a) Within 90 days after the communication of the dispute resolution panel decision with respect to the *related issues* to the *MAP competent authorities*, the *MAP competent authorities* shall reach a proposed *MAP competent authority* mutual agreement concerning the case that reflects the outcome of the dispute resolution panel decision and all other matters previously agreed by the *MAP competent authorities*.
- b) The dispute resolution panel decision shall be final and binding on both *covered jurisdictions* referred to in paragraph 1(a), and the *MAP competent authority* mutual agreement concerning the case that reflects the outcome of the dispute resolution panel decision shall be implemented notwithstanding any time limits in the domestic laws of the *covered jurisdictions* or a *covered tax agreement*, except in the following cases:
  - i) if the member of a Covered Group that presented the request for a dispute resolution panel proceeding does not provide written confirmation that it and all other Entities of the Covered Group directly affected by the case accept the proposed *MAP competent authority* resolution concerning the case that reflects the outcome of the dispute resolution panel decision within 30 days after the notification of the proposed *MAP*

*competent authority* resolution to it pursuant to Annex G Section 5(i). In such a case, the case shall not be eligible for any further consideration by the *MAP competent authorities*. The proposed *MAP competent authority* resolution concerning the case that reflects the outcome of the dispute resolution panel decision shall be considered not to be accepted by an Entity of a Covered Group directly affected by the case if any Entity of a Covered Group directly affected by the case does not, within 30 days after the notification pursuant to Annex G Section 5(i),

- A) withdraw all *related issues* resolved by the dispute resolution panel decision from consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such *related issues*, and
  - B) where the domestic law of the *covered jurisdiction* so allows, file a waiver or otherwise formally forgo any right to bring the *related issues* resolved by the dispute resolution panel decision before a court or administrative tribunal.
- ii) if a final decision of the courts of one of the *covered jurisdictions* referred to in paragraph 1(a) holds that the dispute resolution panel decision is invalid. In such a case, the request for a dispute resolution panel under paragraph 1 shall be considered not to have been made, and the dispute resolution panel process shall be considered not to have taken place (except for purposes of Annex G Section 4(1) through (3) and Annex G Section 6(1)). In such a case, a new request for a dispute resolution panel may be made unless the *MAP competent authorities* agree that such a new request should not be permitted. This paragraph 2(b)(ii) shall apply where, under the domestic laws of a *covered jurisdiction*, a court has invalidated the dispute resolution panel decision based on a procedural or other failure or other conduct inconsistent with the provisions of Section 3 of Part V that has materially affected the outcome of the dispute resolution panel proceeding. This paragraph 2(b)(ii) shall not itself provide a basis for a review of the substance of a dispute resolution panel decision by the courts of the *covered jurisdictions*.
  - iii) if an Entity of a Covered Group directly affected by the case pursues litigation on the *related issues* that were resolved by the dispute resolution panel proceeding in any court or administrative tribunal.
  - iv) if a court of one of the *covered jurisdictions* delivers a decision legally binding on the *MAP competent authority* of that *covered jurisdiction* in the period between the finalisation of the *MAP competent authority* mutual agreement (following the acceptance of the proposed *MAP competent authority* resolution concerning the case by the Entities of the Covered Group directly affected by the case) and the implementation of the mutual agreement by the *MAP competent authorities*.
- c) A dispute resolution panel decision that an issue is not a *related issue* shall have no effect on the *MAP competent authorities'* obligation to endeavour to resolve the case in which that issue arises by mutual agreement under the *covered tax agreement*, Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (or a domestic legislation implementing the same), the Convention on the elimination of double taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC), or any of their amending or succeeding instruments or acts as applicable, nor on the application of mandatory binding dispute resolution mechanisms arising from such instruments with respect to that issue.

3. The *MAP competent authority* of a *covered jurisdiction* that receives a request for a mutual agreement procedure as described in paragraph 1(a)(i) shall, within 60 days of receiving the request:

- a) send a notification to the member of a Covered Group that presented the case that it has received the request; and
- b) send a notification of that request to the *MAP competent authority* of the other *covered jurisdiction*. Where the mutual agreement procedure request does not include a statement confirming that the mutual agreement procedure request was also submitted to the *MAP competent authority* of the other *covered jurisdiction*, this notification shall be accompanied by a copy of the request and all supporting documentation.

4. Within 90 days after a *MAP competent authority* receives the request for a mutual agreement procedure as described in paragraph 1(a)(i) (or within 90 days after receiving a copy thereof from the *MAP competent authority* of the other *covered jurisdiction* in accordance with paragraph 3(b)), it shall either:

- a) notify the member of a Covered Group that presented the case and the other *MAP competent authority* that it has received the information necessary to undertake substantive consideration of the case; or
- b) request additional information from that member of a Covered Group for that purpose and at the same time notify the other *MAP competent authority* that it has made such a request.

For purposes of Section 3 of Part V, the information necessary to undertake substantive consideration of a case is as follows:

- c) The identity of the taxpayer(s) covered by the mutual agreement procedure request.
- d) The basis for the mutual agreement procedure request, identifying the specific tax treaty, the specific treaty article or articles the taxpayer considers are not being correctly applied by one or both *covered jurisdictions* (indicating which *covered jurisdiction* and the contact details of the relevant person(s) in that *covered jurisdiction*), and the mutual agreement procedure provision pursuant to which the request is made.
- e) The facts of the case, including any documentation to support these facts, the taxation years or periods involved and the amounts involved (in all relevant currencies).
- f) An analysis of the issue(s) requested to be resolved through the mutual agreement procedure, including the taxpayer's interpretation of the application of the specific treaty provision(s), to support its basis for making a claim that the provision of the specific tax treaty was not correctly applied by one or both *covered jurisdictions*. This analysis shall be supported by relevant documentation.
- g) Where the mutual agreement procedure request was also submitted to the *MAP competent authority* of the other *covered jurisdiction*, a statement to this effect that identifies the taxpayer that made the request to the *MAP competent authority* of the other *covered jurisdiction* and that includes the date of that request, the *MAP competent authority* to which it was submitted, and a copy of the submission and all supporting documentation.
- h) Whether the mutual agreement procedure request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes, including the date of any such submission, the name and designation of the authority to which it was submitted, and a copy of the submission and all supporting documentation.
- i) Whether any issue in the mutual agreement procedure case was previously dealt with (such as in an advance ruling, advance pricing arrangement, settlement agreement or decisions by any court or administrative tribunal or in other similar processes), including a copy of any such rulings, agreements or decisions.

- j) A statement confirming that all information and documentation provided in the mutual agreement procedure request is accurate and that the taxpayer will assist the *MAP competent authority* in its resolution of the issue(s) presented in the mutual agreement procedure request by furnishing any other information or documentation required by the *MAP competent authority* in a timely manner.
- k) A written statement that the mutual agreement procedure case involves taxation connected with a *related issue*.
- l) Any other information or documentation required by either *MAP competent authority* in accordance with its published MAP guidance.

5. Where pursuant to paragraph 4(b), one or both of the *MAP competent authorities* have requested from the member of a Covered Group that presented the case additional information necessary to undertake substantive consideration of the case, the *MAP competent authority* that requested the additional information shall provide the other *MAP competent authority* with a copy of all such additional information as soon as possible following the receipt of that information. Within 90 days of receiving the additional information or a response concerning the additional information from the member of the Covered Group, the *MAP competent authority* that requested the additional information shall notify that member of a Covered Group and the other *MAP competent authority* either:

- a) that it has received the requested information; or
- b) that some of the requested information is still missing. Such a notification shall only be sent if the missing information is information necessary to undertake substantive consideration of the case. The *MAP competent authority* sending such a notification shall also send the other *MAP competent authority* an explanation to this effect. Where, however:
  - i) the member of a Covered Group that presented the case has provided a written explanation to the *MAP competent authority* requesting the missing information identified in the notification pursuant to this subparagraph (b) detailing why it could not provide this information within the deadline prescribed by the *MAP competent authority*;
  - ii) the missing information identified in the notification pursuant to this subparagraph (b) is not information specifically listed in the published MAP guidance of the *covered jurisdiction* of the *MAP competent authority* requesting that information; and
  - iii) the notification provided under subparagraph (a) concerning the missing information identified in the notification pursuant to this subparagraph (b) has not been sent within 90 days following a notification pursuant to this subparagraph (b),

the *MAP competent authority* that sent the notification pursuant to this subparagraph (b) shall be treated as if it had made the notification referred to in subparagraph (a) unless the *MAP competent authorities* mutually agree that the missing information is information necessary to undertake substantive consideration of the case.

6. Where neither *MAP competent authority* has requested additional information pursuant to paragraph 4(b), the start date referred to in paragraph 1(a)(ii) shall be the earlier of:

- a) the date on which both *MAP competent authorities* have notified the member of a Covered Group that presented the case pursuant to paragraph 4(a); and
- b) the date that is 90 days after the earliest of any notifications sent to the *MAP competent authority* of the other *covered jurisdiction* pursuant to paragraph 3(b).

7. Where additional information has been requested pursuant to paragraph 4(b), the start date referred to in paragraph 1(a)(ii) shall be the latest date on which a *MAP competent authority* that requested

additional information has notified the member of a Covered Group that presented the case and the other *MAP competent authority* pursuant to paragraph 5(a) or on which the notification pursuant to paragraph 5(a) is deemed to have been made pursuant to paragraph 5(b). For such purposes, if one or both of the *MAP competent authorities* send the notification referred to in paragraph 5(b), such notification shall be treated as a request for additional information pursuant to paragraph 4(b). If a *MAP competent authority* that requested additional information fails to notify the member of a Covered Group that presented the case and the other *MAP competent authority* pursuant to paragraph 5, that *MAP competent authority* shall be treated as if it had not made a request for additional information for purposes of paragraphs 4 through 7 and as if it had made the notification referred to in paragraph 5(a).

8. Where a *MAP competent authority* has suspended the mutual agreement procedure referred to in paragraph 1(a) because a case with respect to one or more of the same *related issues* is pending before a court or administrative tribunal or is in a separate process required to be completed in connection with a court or administrative tribunal process in advance of that court or administrative tribunal process, the period provided in paragraph 1(a)(ii) will stop running until either a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. In these circumstances, the *MAP competent authority* that has suspended the mutual agreement procedure shall notify the other *MAP competent authority* as soon as possible of the suspension and its basis. In addition, where the member of a Covered Group that presented the case and the *MAP competent authorities* have agreed to suspend the mutual agreement procedure for other reasons, the period provided in paragraph 1(a)(ii) will stop running until the suspension has been lifted.

9. After the start of the period provided in paragraph 1(a)(ii):

- a) Where both *MAP competent authorities* agree that an Entity of a Covered Group directly affected by the case has failed to provide in a timely manner any additional material information requested by either *MAP competent authority*, the period provided in paragraph 1(a)(ii) shall be extended for an amount of time equal to the period beginning on the date on which the information was requested and ending on the date on which that information was provided.
- b) For circumstances not covered by paragraph 9(a), where uncooperative conduct by any Entity of the Covered Group before or after filing the mutual agreement procedure request has undermined or impeded a tax administration's examination of the periods concerned by the case or the *MAP competent authorities'* substantive consideration and resolution of the case, the *MAP competent authorities* may mutually agree to extend (including the period of such extension) or suspend the period provided in paragraph 1(a)(ii). The *MAP competent authorities* shall notify the member of the Covered Group that presented the case at the time that they intend to apply this provision.

10. Any unresolved *related issue* arising from a mutual agreement procedure case otherwise within the scope of the dispute resolution panel process provided for by this Convention shall not be submitted to a dispute resolution panel if:

- a) a decision on this *related issue* has already been rendered by a court or administrative tribunal or in a separate process required to be completed in connection with a court or administrative tribunal process in advance of that court or administrative tribunal process of either of the *covered jurisdictions* and the *MAP competent authority* of the *covered jurisdiction* of that court or administrative tribunal or of the separate process required to be completed in connection with a court or administrative tribunal process in advance of that court or administrative tribunal process is *legally bound* by the decision; or

- b) the *MAP competent authorities* mutually agree that the scope of the case is not suitable for the dispute resolution panel process.<sup>7</sup>

11. If, at any time after a request for a dispute resolution panel has been made a decision concerning the *related issue* is rendered by a court or administrative tribunal or in a separate process required to be completed in connection with a court or administrative tribunal process in advance of that court or administrative tribunal process of one of the *covered jurisdictions* and the *MAP competent authority* of the *covered jurisdiction* of that court or administrative tribunal is *legally bound* by the decision:

- a) the dispute resolution panel process shall terminate if the decision by the court or administrative tribunal or in the separate process is rendered before the dispute resolution panel has delivered its decision to the *MAP competent authorities*; or
- b) notwithstanding paragraph 2(b), the dispute resolution panel decision shall not be final and binding on both *covered jurisdictions*, and any mutual agreement concerning the case that reflects the outcome of the dispute resolution panel decision shall not be implemented if the decision by the court or administrative tribunal or in the separate process is rendered after the dispute resolution panel has delivered its decision to the *MAP competent authorities*.

12. For purposes of this Article and the mutual agreement procedure provisions of the relevant *covered tax agreement* and of Article 33:

- a) The dispute resolution panel proceeding with respect to a mutual agreement procedure case shall terminate if, at any time after a request for a dispute resolution panel has been made and before the dispute resolution panel has delivered its decision to the *MAP competent authorities* of the *covered jurisdictions*:
  - i) the *MAP competent authorities* of the *covered jurisdictions* reach a mutual agreement to resolve the case;
  - ii) the member of a Covered Group that presented the case withdraws the request for a dispute resolution panel or the request for a mutual agreement procedure;
  - iii) a decision concerning the case is rendered in one of the *covered jurisdictions* and the *MAP competent authority* of the *covered jurisdiction* of that court or administrative tribunal is *legally bound* by the decision, as provided in paragraph 11(a); or
  - iv) any member of the Covered Group or any of its authorised representatives or advisors breaches the written confidentiality agreement required by Annex G Section 4(3).
- b) Where the dispute resolution panel proceeding with respect to a case has been terminated pursuant to paragraph 12(a), the case shall not be eligible for any further consideration by the *MAP competent authorities*, except to the extent mutually agreed by the *MAP competent authorities* in the cases described in paragraph 12(a)(ii) (but only where the member of a Covered Group that presented the case has not also withdrawn the request for a mutual agreement procedure) and in paragraph 12(a)(iii) (to permit the *MAP competent authority* of the *covered jurisdiction* not *legally bound* by the decision to evaluate whether it would agree to provide relief consistent with that decision, such as by providing a corresponding adjustment).

13. Notwithstanding paragraph 2, a dispute resolution panel decision pursuant to this Article shall not be binding on the *covered jurisdictions* and shall not be implemented if the *MAP competent authorities* of the *covered jurisdictions* agree on a different resolution of all unresolved *related issues* in the mutual

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<sup>7</sup> Brazil and India have expressed objections to subparagraph (b) which extend also to corresponding aspects of paragraph 14.

agreement procedure case within 90 days after the dispute resolution panel decision has been delivered to them.

14. Any unresolved *related issue* arising from a case presented pursuant to the mutual agreement procedure provisions of a *covered tax agreement* and otherwise within the scope of the dispute resolution panel process provided for in this Article shall not be submitted to a dispute resolution panel where that *covered tax agreement* provides that a mandatory binding dispute resolution mechanism, such as an arbitration panel or similar body, is required to be set up, upon the request of the member of the Covered Group or automatically, after a set time period to resolve unresolved issues arising from a mutual agreement procedure case or where the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (or a domestic legislation implementing the same), the Convention on the elimination of double taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC), or any of their amending or succeeding instruments or acts are applicable.

15. Notwithstanding the provisions of paragraph 14, the *covered jurisdictions* may mutually agree that the dispute resolution panel process provided for in this Article shall apply to unresolved *related issues* arising from a case presented pursuant to the provisions of a *covered tax agreement* where that *covered tax agreement* provides that a mandatory binding dispute resolution mechanism, such as an arbitration panel or similar body, is required to be set up, upon the request of the member of the Covered Group or automatically, after a set time period to resolve unresolved issues arising from a mutual agreement procedure case.

### **Article 36 – Elective Binding Dispute Resolution Panel Mechanism**

1. The elective binding dispute resolution panel mechanism described in this Article shall apply to *related issues* in the place of the dispute resolution panel mechanism provided in Article 35 for disputes involving a *covered jurisdiction* that:

- a) is classified by the World Bank as a low-income, lower-middle-income or upper-middle-income jurisdiction by reference to *gross national income* per capita, calculated using the World Bank Atlas method, as determined for the most recent period for which such data is published that precedes the date of entry into effect of Section 3 of Part V for that *covered jurisdiction*, or that precedes the date of the most recent review provided for in paragraph 4, whichever is later;
- b) is not a member of the Organisation for Economic Cooperation and Development nor a member country of the G20 on the date of entry into effect of Section 3 of Part V for that *covered jurisdiction*, or on the date of the most recent review provided for in paragraph 4, whichever is later;
- c) has not received from other members of the Organisation for Economic Cooperation and Development Forum on Tax Administration MAP Forum (FTA MAP Forum) feedback that its policies or practices concerning the mutual agreement procedure require improvement in any period following the most recent deferral of that *covered jurisdiction's* Base Erosion and Profit Shifting (BEPS) Action 14 peer review that precedes the date of entry into effect of Section 3 of Part V for that *covered jurisdiction* or, where that *covered jurisdiction's* BEPS Action 14 peer review has not been deferred, in the period covered by that *covered jurisdiction's* most recent BEPS Action 14 peer review preceding the date of entry into effect of Section 3 of Part V for that *covered jurisdiction* or any subsequent period; and
- d) has had no or low levels of mutual agreement procedure disputes.

2. A *covered jurisdiction* shall be considered to have “had no or low levels of mutual agreement procedure disputes” only if the three-year average number of attribution/allocation mutual agreement procedure cases in its inventory at the end of the year, as determined by the mutual agreement procedure statistics submitted by it annually, is below ten cases. For such purposes:

- a) the three-year average shall initially be computed using the mutual agreement procedure statistics for the three years that immediately precede the date of entry into effect of Section 3 of Part V for that *covered jurisdiction*; and
- b) the three-year average shall be computed during the review provided for in paragraph 4 using the mutual agreement procedure statistics for the three years that immediately precede the date of that review.

*Covered jurisdictions* that have not submitted mutual agreement procedure statistics for any of the years in question shall not be considered eligible for the process under paragraph 1.

3. The provisions of paragraph 1 shall apply to determine the eligibility of a *covered jurisdiction* for the elective binding dispute resolution panel mechanism notwithstanding the deferral, or non-deferral, of that *covered jurisdiction's* BEPS Action 14 peer review.

4. The eligibility of a *covered jurisdiction* for the elective binding dispute resolution panel mechanism under the criteria in paragraph 1 shall be reviewed every three years by the FTA MAP Forum. Any *covered jurisdiction* that is found to not meet the criteria in paragraphs 1 and 2 during such review shall be ineligible for the elective binding dispute resolution panel mechanism provided in this Article in all subsequent years.

5. The elective binding dispute resolution panel mechanism shall apply *mutatis mutandis* the process provided in Article 35, with the following paragraphs 5(a), 5(b), 5(c) and 5(d) substituted in place of Article 35(1)(a), (1)(d), (2)(c), (14) and (15), respectively:

- a) Where,
  - i) a member of a Covered Group has presented a case to the *MAP competent authority* of a *covered jurisdiction* pursuant to the mutual agreement procedure provisions of a *covered tax agreement*, or the provisions of Article 33, on the basis that the actions of one or both of the *covered jurisdictions* have resulted for that member of a Covered Group in taxation not in accordance with the provisions of that *covered tax agreement*, and
  - ii) the *MAP competent authorities* of the *covered jurisdictions* are unable to reach an agreement to resolve the case pursuant to the mutual agreement procedure within a period of two years beginning on the start date referred to in paragraph 6 or 7, as the case may be (unless, prior to the expiration of that period the *MAP competent authorities* of the *covered jurisdictions* have agreed to a different time period with respect to that case and have notified the member of a Covered Group that presented the case of such agreement),

any unresolved *related issues* arising from the mutual agreement procedure case shall, if the member of a Covered Group requests and the *MAP competent authorities* mutually agree, be submitted to a dispute resolution panel in the manner described in this Article (as supplemented by any rules or procedures agreed upon by the *MAP competent authorities* of the *covered jurisdictions* pursuant to the provisions of Annex G Section 2).

- b) Within ten days after the receipt of the request that unresolved *related issues* be submitted to a dispute resolution panel, a *MAP competent authority* that receives a request without a confirmation that it was also sent to the other *MAP competent authority* shall send a copy of that request and the accompanying documentation to the other *MAP competent authority*. Within 30 days after the receipt of the request, the *MAP competent authorities* shall determine



by mutual agreement whether the unresolved *related issues* in the case will be resolved by a dispute resolution panel. The *MAP competent authority* of the *covered jurisdiction* of residence of the member of a Covered Group shall notify the member of a Covered Group as soon as possible following that mutual agreement whether the unresolved *related issues* in the case will be submitted to a dispute resolution panel. For purposes of applying this Article, the references in Annex G Section 1(1) and (2) and Annex G Section 3(b) to a “request for a dispute resolution panel pursuant to Article 35(1)” shall be replaced by references to “notification of the member of a Covered Group pursuant to Article 36(5)(b)”.

- c) The absence of a *MAP competent authority* mutual agreement to submit an issue to a dispute resolution panel shall have no effect on the *MAP competent authorities*’ obligation to endeavour to resolve the case in which that issue arises by mutual agreement, nor on the application of any other mandatory binding dispute resolution mechanism.
- d) Article 35(14) and (15) shall be replaced in their entirety by the following paragraph:

The *MAP competent authorities* of the *covered jurisdictions* shall by mutual agreement determine how the mechanism provided by this Article shall apply with respect to any unresolved *related issue* arising from a mutual agreement procedure case otherwise within the scope of the dispute resolution panel process provided for in this Article that also falls within the scope of a case with respect to which a mandatory binding dispute resolution mechanism, such as an arbitration panel or similar body, is required to be set up, upon the request of the member of the Covered Group or automatically, after a set time period in accordance with a bilateral or multilateral convention or other legal instrument that provides for mandatory binding resolution of unresolved issues arising from a mutual agreement procedure case.

## SECTION 4 – EXCHANGE OF INFORMATION AND INTERNATIONAL COOPERATION

### **Article 37 – Exchange of Information and International Cooperation**

1. The Parties shall exchange any information that is foreseeably relevant for the administration or enforcement of this Convention or the domestic laws concerning taxes imposed in accordance with Article 4 or relieved in accordance with Article 9.
2. The Competent Authorities of two or more Parties may mutually agree the information to be exchanged and the procedures for exchanging such information and international cooperation pursuant to this Article.
3. Any information obtained by a Party under this Article shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party.
4. Any information obtained by a Party under this Article shall be disclosed only to persons or authorities (including courts, administrative or supervisory bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the tax policy analysis of, or the determination of appeals in relation to, taxes imposed in accordance with Article 4 or relieved in accordance with Article 9, or taxes covered by the exchange of information provisions of a bilateral or multilateral tax treaty or agreement in force between that Party and the Party providing the information, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes, and only insofar as the taxation thereunder is not contrary to this Convention or the terms of a bilateral or multilateral tax treaty or agreement in force between the Party that provided the information pursuant to paragraph 1 and the Party that has obtained the information. They may, notwithstanding the

provisions of paragraph 3, disclose it in public court proceedings or in judicial decisions relating to such taxes.

5. Notwithstanding paragraph 4, information provided by a Party to another Party under this Article may be transmitted by the latter to a third Party provided it is foreseeably relevant for that third Party for administering or enforcing this Convention or the domestic laws concerning taxes imposed in accordance with Article 4 or relieved in accordance with Article 9. Any transmission beyond the scope of the tax certainty and dispute resolution process for Amount A (Articles 22 through 36) is subject to the prior authorisation by the Competent Authority of the first-mentioned Party. A third Party that obtains information under this paragraph is subject to the provisions of paragraphs 3 and 4 with respect to such information.

6. Notwithstanding paragraph 4, and solely for the purpose of administering or enforcing this Convention, independent experts acting in application of a *determination panel* under Articles 27 and 28 or a dispute resolution panel under Articles 35 and 36 and Annex G shall be considered to be persons or authorities to whom information may be disclosed. Information that the Competent Authorities obtain from such persons shall be considered information that is exchanged pursuant to paragraph 1 and is subject to the confidentiality protections of paragraph 3. Information obtained by independent experts pursuant to this paragraph shall be treated as confidential and may only be used by such persons to fulfil their role as independent experts. The Competent Authorities shall ensure that independent experts agree in writing to treat any information relating to the tax certainty process or dispute resolution mechanisms consistent with the confidentiality, nondisclosure and limitations on use provisions of this Article and the applicable domestic laws of the Parties.

7. If information is requested by a Party in accordance with this Article, the other Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 12 but in no case shall such limitations be construed to permit a Party to decline to supply information solely because it has no domestic interest in such information.

8. In no case shall the provisions of paragraph 12 be construed to permit a Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

9. In accordance with its domestic laws, a Party may allow representatives of another Party to interview individuals and examine books and records in the first-mentioned Party. The first-mentioned Party may not invoke its domestic laws so as to impede the operation of the tax certainty and dispute resolution processes for Amount A provided in Articles 22 through 36 in that Party.

10. A Party may choose to apply this paragraph with respect to the taxes imposed in accordance with Article 4 with respect to one or more Parties and shall notify the Depositary accordingly. This paragraph shall apply only between Parties that have included each other in their respective notifications regarding assistance in the collection of *revenue claims*, and such assistance shall be governed by the following:

- a) the term “revenue claim” as used in this paragraph means an amount owed in respect of the taxes imposed in accordance with Article 4, as well as interest, administrative penalties and costs of collection or conservancy related to such amount;
- b) when a *revenue claim* of a Party is enforceable under the laws of that Party and is owed by an Entity who, at that time, cannot, under the laws of that Party, prevent its collection, that *revenue claim* shall, at the request of the Competent Authority of that Party, be accepted for purposes of collection by the Competent Authority of the other Party. That *revenue claim* shall be collected by that other Party in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the *revenue claim* were a *revenue claim* of that other Party that met the conditions allowing that other Party to make a request under this paragraph;

- c) when a *revenue claim* of a Party is a claim in respect of which that Party may, under its law, take measures of conservancy with a view to ensure its collection, that *revenue claim* shall, at the request of the Competent Authority of that Party, be accepted for the purpose of taking measures of conservancy by the Competent Authority of the other Party. That other Party shall take measures of conservancy in respect of that *revenue claim* in accordance with the provisions of its laws as if the *revenue claim* were a *revenue claim* of that other Party even if, at the time when such measures are applied, the *revenue claim* is not enforceable in the first-mentioned Party or is owed by an Entity who has a right to prevent its collection;
- d) notwithstanding the provisions of subparagraphs (b) and (c), a *revenue claim* accepted by the Competent Authority of a Party for purposes of subparagraphs (b) and (c) shall not, in that Party, be subject to the time limits or accorded any priority applicable to a *revenue claim* under the laws of that Party by reason of its nature as such. In addition, a *revenue claim* accepted by the Competent Authority of a Party for purposes of subparagraphs (b) and (c) shall not, in that Party, have any priority applicable to that *revenue claim* under the laws of the other Party;
- e) acts carried out by a Party in the collection of a *revenue claim* accepted by the Competent Authority of that Party for purposes of subparagraphs (b) and (c) which if they were carried out by the other Party would have the effect of suspending or interrupting the time limits applicable to the *revenue claim* in accordance with the laws of that other Party shall have such effect under the laws of that other Party. The Competent Authority of the first-mentioned Party shall inform the Competent Authority of the other Party of the acts which the first-mentioned Party has carried out in the collection of the *revenue claim*;
- f) proceedings with respect to the existence, validity or the amount of a *revenue claim* of a Party shall not be brought before the courts or administrative bodies of the other Party; and
- g) where, at any time after a request has been made by the Competent Authority of a Party under subparagraphs (b) and (c) and before the other Party has collected and remitted the relevant *revenue claim* to the first-mentioned Party, the relevant *revenue claim* ceases to be:
  - i) in the case of a request under subparagraph (b), a *revenue claim* of the first-mentioned Party that is enforceable under the laws of that Party and is owed by an Entity who, at that time, cannot, under the laws of that Party, prevent its collection; or
  - ii) in the case of a request under subparagraph (c), a *revenue claim* of the first-mentioned Party in respect of which that Party may, under its laws, take measures of conservancy with a view to ensure its collection;

the Competent Authority of the first-mentioned Party shall promptly notify the Competent Authority of the other Party of that fact and, at the option of the Competent Authority of that other Party, the Competent Authority of the first-mentioned Party shall either suspend or withdraw its request.

11. A Party may permit the service of documents with respect to the taxes of another Party imposed in accordance with Article 4 on a person within the territory of the first-mentioned Party, directly, either through the post only or both through the post and electronically. Where a Party has not permitted such service of documents, the Party shall, upon request of the other Party, provide administrative assistance in such service of documents. Each Party shall notify the Depository, indicating whether it permits the service of documents directly, either through the post only or both through the post and electronically, and, if so, to which Parties such permission extends, and specifying any relevant procedural requirements for the service of documents.

12. Nothing in this Article shall be construed so as to impose on a Party the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or the other Party or to carry out measures which would be contrary to public policy (*ordre public*);
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or the other Party;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*);
- d) to provide assistance in the collection of *revenue claims* if the other Party has not pursued all reasonable means of collection or conservancy, as the case may be, available under its laws or administrative practice; or
- e) to provide assistance in the collection of *revenue claims* in those cases where the administrative burden for that Party is clearly disproportionate to the benefit to be derived by the other Party.

## PART VI – TREATMENT OF SPECIFIC MEASURES ENACTED BY PARTIES

### SECTION 1 – REMOVAL AND STANDSTILL OF DIGITAL SERVICES TAXES AND RELEVANT SIMILAR MEASURES

#### **Article 38 – Removal of Existing Measures**

1. A Party shall not apply any measure listed in Annex A to any person as from the date specified in Article 49(4).
2. Listing or not listing a specific measure in Annex A:
  - a) shall not be considered evidence as to whether that measure is described in Article 39(2); and
  - b) shall determine that measure's treatment solely for purposes of this Convention.

#### **Article 39 – Elimination of Amount A Allocations for Parties Imposing Digital Services Taxes and Relevant Similar Measures**

1. Subject to Annex H, any Party of which a *digital services tax or relevant similar measure*, or a measure listed in Annex A, is in force and in effect during a Period:
  - a) shall not be allocated any Amount A Profit under Article 5 with respect to that Period; and
  - b) shall not impose a tax with respect to that Period under any domestic law provision implementing the provisions of Article 4.
2. For purposes of this Article, the term “digital services tax or relevant similar measure” means any tax imposed by a Party, however described, if it meets all of the following criteria and is not described in paragraph 3:
  - a) the application of such tax, or the amount of tax imposed, is determined primarily by reference to the location of customers or users, or other similar market-based criteria;
  - b) such tax either:
    - i) is applicable by its terms solely to businesses carried out by persons that:
      - A) are not residents of that Party (“non-residents”); or
      - B) are primarily owned, directly or indirectly, by non-residents of that Party (“foreign-owned businesses”); or
    - ii) applies revenue thresholds, exemptions for taxpayers subject to domestic corporate income tax in that Party, or other scope restrictions that:
      - A) cause the measure to apply in practice exclusively or almost exclusively to non-resident or foreign-owned businesses; and

B) have the effect of insulating domestic businesses from the application of the tax.

Determining whether the condition of clause (B) is met shall take into account all relevant facts and circumstances, including the policy objectives of the tax and the overall distribution of domestic and foreign businesses in that Party. The mere fact that there are few or no domestic enterprises in the relevant market is not dispositive; and

- c) such tax is treated by that Party as outside the scope of any agreements (other than this Convention) in force between that Party and one or more other jurisdictions for the avoidance of double taxation with respect to taxes on income.
3. The term “digital services tax or relevant similar measure” shall not include:
- a) a rule that addresses artificial structuring to avoid traditional permanent establishment or similar domestic law nexus requirements that are based on physical presence (including both direct physical presence and the physical presence and activity of an agent);
  - b) value added taxes, goods and services taxes, sales taxes, or other similar taxes on consumption; or
  - c) generally applicable taxes imposed with respect to transactions on a per-unit or per-transaction basis rather than on an ad valorem basis.
4. A Party shall be considered to have a *digital services tax or relevant similar measure* in force and in effect for a Period if:
- a) it is determined under Annex H to have adopted a measure described in paragraph 2 with effect for that Period; and
  - b) the Conference of the Parties has not determined that the Party has withdrawn that measure or otherwise terminated its application with respect to all companies, with effect for that Period.
5. The definition of “digital services tax or relevant similar measure” in paragraph 2 and any determination under Annex H shall be considered relevant, including as evidence, solely for purposes of this Convention.

## SECTION 2 – TREATMENT OF SPECIFIC MEASURES IN SCOPE OF TAX TREATIES

### **Article 40 – Treatment of Specific Measures in Scope of Tax Treaties**

1. Subject to paragraph 2, a Party shall not apply a tax measure to a Group Entity of a Covered Group if:
- a) the measure is not a *digital services tax or relevant similar measure* solely because it does not meet the condition described in Article 39(2)(c); and
  - b) the threshold for applying the measure is based on interaction by the Group Entity or Covered Group with the economy of the Party determined on the basis of criteria including local sales, number of users or targeting of a domestic audience, that do not require the physical presence in the Party of the Group Entity or the payor of a payment to the Group Entity.

2. Paragraph 1 shall not apply if application of the measure to the relevant Group Entity is permitted under an agreement in effect between the Party and the Jurisdiction of residence of the Group Entity for the avoidance of double taxation with respect to taxes on income.

## PART VII – FINAL PROVISIONS

### ***Article 41 – Signature and Ratification, Acceptance or Approval***

1. As of the [x] day of [month, year], this Convention shall be open for signature by all States.
2. This Convention is subject to ratification, acceptance or approval.

### ***Article 42 – Territorial Application***

1. Any State may, at the time of signature, when depositing its instrument of ratification, acceptance, or approval, or at any later date, deposit a declaration specifying a Jurisdiction for whose international relations it is responsible and to which this Convention shall apply. The Convention shall enter into force in respect of such a Jurisdiction on the later of the date of entry into force of this Convention for the State and the first day of the calendar month following the expiration of a period of three months beginning on the date of the deposit of the declaration.

2. For purposes of applying this Convention to a Jurisdiction for which a declaration described in paragraph 1 is in force, and subject to paragraphs 3 and 4, the following provisions shall apply as though the Jurisdiction were a Party separate from the State responsible for its international relations and from any other Jurisdictions for whose international relations the same State is responsible<sup>8</sup>:

- a) Article 2(l) and the provisions contained in Annex B Section 3 (definition of the Designated Payment Entity);
- b) Article 4 (Taxation of Profits of a Covered Group);
- c) Article 6(2) (Sources of Adjusted Revenues);
- d) Article 9 (Relief for Amount A Taxation);
- e) Article 11(15) (Allocation of the Obligation to Eliminate Double Taxation with Respect to the Amount A Relief Amount);
- f) Article 12 (Provision of Relief for Amount A Taxation to Entities of a Covered Group);
- g) Article 13 (Identification of Group Entities of a Covered Group Entitled to Elimination of Double Taxation);
- h) the provisions contained in Section 1 (Administration) of Part V;
- i) the provisions contained in:

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<sup>8</sup> Discussions are ongoing as to whether to include an election for a common application of the MLC to a non-State jurisdiction which was not a member of the Inclusive Framework on 11 July 2023 and the State responsible for its foreign relations, and if so, how to give effect to that election in a way that respects the interests of the other parties. The United States believes such an election is necessary. The inclusion of such an election is opposed by some other IF members.



- i) Section 2 (Tax Certainty Framework for Parts II to IV (Amount A)) of Part V, with the exception of Articles 25 (Constitution of a Scope Review Panel or Review Panel) and 28 (Composition of a Determination Panel); and
  - ii) Annex F, with the exception of Section 3 (Composition of a Determination Panel);
  - iii) solely in the case of a *specified non-State jurisdiction*, Articles 25 (Constitution of a Scope Review Panel) and 28 (Composition of a Determination Panel), and Annex F Section 3 (Composition of a Determination Panel);
- j) Article 37 (Exchange of Information and International Cooperation);
  - k) Article 49 (Entry into Effect);
  - l) Annex B Section 4(13)(i)(i);
  - m) Annex C Section 1(5) (Provisions for Group Mergers and Demergers, Internal Fragmentation, Dual-listed Arrangements and Stapled Structures);
  - n) Annex E; and
  - o) the provisions contained in Part VI (Treatment of Specific Measures Enacted by Parties) and in Annex H(1), (2) and (10) (Review Process and Early Clarification on Digital Services Taxes and Relevant Similar Measures);
3. If a request described in Annex H(1) is made with respect to a concerned measure enacted by a Jurisdiction for which a declaration described in paragraph 1 is in force, then if specified in that declaration, the application of Annex H shall be modified as follows:
- a) the Jurisdiction, rather than the Party, shall perform the self-assessment described in Annex H(4); and
  - b) if an *ad hoc* advisory panel is formed under Annex H(8), the Jurisdiction shall be treated as the enacting Party; in such a case, the Party responsible for the international relations of the Jurisdiction shall not be included in the *ad hoc* advisory panel.
- If no such specification is included in the declaration, the Party responsible for the international relations of the Jurisdiction shall perform the self-assessment and shall be treated as the enacting Party for purposes of an *ad hoc* advisory panel.
4. For purposes of the Conference of the Parties described in Article 47:
- a) a Jurisdiction for which a declaration is in force under paragraph 1 shall not participate in the Conference of the Parties separately from the Party responsible for its international relations except to the extent provided in subparagraph (b); and
  - b) a *specified non-State jurisdiction* for which a declaration is in force under paragraph 1 shall be permitted to participate in the Conference of the Parties separately from the Party responsible for its international relations and take part in decisions of the Conference of the Parties with respect to the functions described in Article 47(3)(b) through (k) and (o) and with respect to addressing any additional questions that may arise as to the interpretation or implementation of Part V .
5. For the purpose of determining whether the deposit of instruments of ratification, acceptance or approval by Contracting States represent 600 points or more for purposes of Article 48 (Entry into Force), any points allocated to a Jurisdiction for which a declaration described in paragraph 1 has been deposited

and has not been withdrawn shall be considered together with the points allocated to the Contracting State responsible for its international relations.

6. For the purpose of determining the total points represented by the Parties for purposes of Articles 43 (Review Process to Lower the Adjusted Revenues Threshold) and 51 (Termination), any points allocated to a Jurisdiction for which a declaration described in paragraph 1 is in force shall be considered together with the points allocated to the Party responsible for its international relations.

7. For purposes of this Article, the term “specified non-State jurisdiction” refers to:

- a) Guernsey, the Isle of Man, and Jersey; and
- b) another Jurisdiction for which a declaration described in paragraph 1 is in force if:
  - i) the Party responsible for the Jurisdiction’s international relations submits a notification stating its conclusion that the Jurisdiction should be treated as a *specified non-State jurisdiction* and certifying that the Jurisdiction has:
    - A) an independent tax system, including the competence to legislate on corporate tax on its own authority;
    - B) an independent tax administration; and
    - C) an independent competent authority with capability and experience in international tax coordination; and
  - ii) following discussion in the Conference of the Parties, no Party objects to treating the Jurisdiction as a *specified non-State jurisdiction*.

An objection pursuant to subdivision (ii) shall not prevent the Party responsible for the Jurisdiction’s international relations from submitting a notification described in subdivision (i) with respect to the Jurisdiction again at a later date.

### **Article 43 – Review Process to Lower the Adjusted Revenues Threshold**

1. Article 3(9) shall apply with respect to any Period beginning on or after the expiration of a period of one year from the date on which the implementation of this Convention has been deemed successful under paragraph 5 or 6, on the basis of a review conducted in accordance with paragraphs 2 and 3 (the “implementation review”).

2. The Conference of the Parties shall begin an implementation review after the expiration of a period of seven years from the date on which this Convention enters into force in accordance with Article 48(1), and shall complete the implementation review no more than eight years from the date on which this Convention enters into force.

3. The implementation review will include consideration of whether the implementation of this Convention has been successful with respect to:

- a) the rules on elimination of double taxation in Part IV, including whether elimination of double taxation has been timely and effective;
- b) the rules on the administration and exchange of information in Sections 1 and 4 of Part V, including:

- i) the timely payment of tax liabilities, taking into account the application of secondary liability as the case may be;
  - ii) the timely and effective exchange of information and respect of information secrecy; and
  - iii) the resources required to administer this Convention, relative to the Amount A Profit reallocated under this Convention;
- c) the timeliness and effectiveness of the *tax certainty framework* for Amount A and issues related to Amount A contained in Sections 2 and 3 of Part V, including in particular the formation and operation of:
- i) *scope review panels* and *review panels*;
  - ii) *determination panels* with respect to tax certainty for Parts II through IV; and
  - iii) dispute resolution panels with respect to tax certainty for issues related to Amount A; as well as the extent to which Parties implement *certainty outcomes*; and
- d) the rules on the removal and standstill of *digital services taxes and relevant similar measures* in Section 1 of Part VI, including:
- i) the effective withdrawal of existing measures subject to removal;
  - ii) the timeliness of the decision-making process in the Conference of the Parties pursuant to Annex H; and
  - iii) the effectiveness of the elimination of the allocation of Amount A Profit in case the Conference of the Parties decides a measure is a *digital services tax or relevant similar measure*.

4. To facilitate the implementation review required under paragraphs 2 and 3, the Conference of the Parties may agree on a process for collecting information from the Parties on an ongoing basis about their experience in implementing this Convention. Meetings of the Conference of the Parties shall be convened as necessary to discuss any difficulties that Parties encounter with implementation with a view to finding appropriate ways to address them to the extent possible before the beginning of the implementation review.

5. The implementation of this Convention shall be deemed successful on the date that is three months after the date of completion of the implementation review, unless before that date, written objections, accompanied by an explanation in sufficient detail (including specific references to the elements listed in paragraph 3 that the Party considers to be unsuccessful) to allow the other Parties to understand the specific implementation issues giving rise to the objection, are received from:

- a) a simple majority of Parties; or
- b) 20 or more Parties representing a total of 600 points or more as set out in Annex I, or in the most recently updated assignment of points pursuant to Article 47(4).

6. If at the expiration of the deadline described in paragraph 5, written objections have prevented implementation from being deemed successful, then within three months of that deadline, a meeting of the Conference of the Parties shall be convened to address the implementation issues that were specifically identified in those written objections. The implementation of this Convention shall be deemed successful on the date that is two years after the deadline described in paragraph 5, or another date agreed by the Conference of the Parties, unless by that date written objections, accompanied by an explanation that

identifies in detail which of the implementation issues identified in the written objections described in paragraph 5 have not yet been addressed, are received from:

- a) a simple majority of Parties; or
- b) 25 or more Parties, representing a total of 700 points or more as set out in Annex I, or in the most recently updated assignment of points pursuant to Article 47(4).

7. If, by the date that is two years after the deadline described in paragraph 5 (or other date that may be agreed by the Conference of the Parties under paragraph 6), written objections have prevented implementation from being deemed successful, this Convention shall terminate on the date specified in Article 51(3), unless the Parties decide by simple majority within three months of the deadline described in paragraph 6 that the Convention shall not terminate.

#### ***Article 44 – Amendment***

1. Any Party may propose an amendment to this Convention by submitting the proposed amendment to the Depositary. The Depositary shall inform the Parties and Signatories of any proposed amendment.
2. A meeting of the Conference of the Parties shall be convened to consider the proposed amendment within six months of the communication by the Depositary of the proposed amendment in accordance with paragraph 1, provided that the convening of such meeting is supported by one-third of the Parties.

#### ***Article 45 – Reservations***

No reservations may be made to this Convention.

#### ***Article 46 – Relationship Between this Convention and Existing Tax Agreements***

In the event of a conflict between the provisions of this Convention and the provisions of any Existing Tax Agreement, the provisions of this Convention shall prevail to the extent of the conflict.

#### ***Article 47 – Conference of the Parties***

1. A Conference of the Parties shall be established for the purpose of taking any decisions or exercising any functions that are required or appropriate under the provisions of this Convention.
2. The Depositary shall convene the first meeting of the Conference of the Parties no later than three months following the entry into force of the Convention.
3. The functions of the Conference of the Parties include addressing any questions that may arise as to the interpretation or implementation of the Convention, as well as the specific functions set out in the following provisions of the Convention:
  - a) Article 2(1)(a) on the definition of the term Acceptable Financial Accounting Standard;

- b) Article 15(2) on the development of a standard template that will be used for filing the Amount A Tax Return and Common Documentation Package;
- c) Article 22 on Requests for Certainty over Whether a Group is a Covered Group;
- d) Article 23 on Requests for Certainty by a Covered Group;
- e) Article 24 on Conditions for a Review by a Scope Review Panel or Review Panel;
- f) Article 25 on the Constitution of a Scope Review Panel or Review Panel;
- g) Article 26 on Certainty Reviews;
- h) Article 27 on the Determination Panel to Resolve Disagreements;
- i) Article 29 on Certainty Outcomes;
- j) Article 30 on the Withdrawal of a Request for Certainty;
- k) Article 31 on Tax Examinations Where a Request for Certainty is not made or is Withdrawn or Considered to have been Withdrawn;
- l) Article 32 on the definitions of the terms “advance certainty documentation package”, “affected party”, “follow-up scope certainty documentation package”, “lead tax administration”, “listed party”, “scope certainty documentation package”, and “tax certainty user fee”;
- m) Article 42 on the discussion regarding the status of *specified non-State jurisdictions*;
- n) Article 43 on the Review Process to Lower the Adjusted Revenues Threshold;
- o) Annex C Section 6 on the Defence Group Adjustment;
- p) Annex E Section 1 on the definition of the term “reasonable measures”;
- q) Annex F Sections 1 and 3 on Certainty Reviews and the Composition of a Determination Panel;
- r) Annex H on the Review Process and Early Clarification on Digital Services Taxes and Relevant Similar Measures;

4. In addition to the functions identified in paragraph 3, the Conference of the Parties shall update the points assigned to Jurisdictions for purposes of Articles 43, 48 and 51, in lieu of the points assigned in Annex I, based on the data available regarding the proportion of Ultimate Parent Entities of Covered Groups residing in each Jurisdiction relative to the total number of Covered Groups, expressed as points out of one thousand:

- a) for the purpose of determining whether the implementation of the Convention is deemed successful under Article 43(5) and (6); once agreed, the updated points shall be used for the purpose of applying Article 51(2), until a new updated list has been approved under subparagraph (b);
- b) at least one year after the date on which the implementation of the Convention has been deemed successful under Article 43(5) or (6), for the purpose of applying Article 51(2), based on the data available regarding the proportion of Ultimate Parent Entities of Covered Groups residing in Parties; and

- c) every five years thereafter.
5. Decisions of the Conference of the Parties shall be made by consensus, except where:
    - a) another decision-making process is provided in the Convention; or
    - b) the Conference of the Parties agrees by consensus to adopt a different rule.
  6. The Conference of the Parties shall adopt its rules of procedure.
  7. The Conference of the Parties shall be served by a dedicated Secretariat based in the Organisation for Economic Co-operation and Development. This Secretariat shall act under the oversight of the Conference of the Parties to support the interpretation, implementation and application of this Convention by preparing discussions and decisions of the Conference of the Parties and undertaking any other tasks assigned to it by the Conference of the Parties or pursuant to the provisions of the Convention.

#### **Article 48 – Entry into Force**

1. This Convention shall enter into force on a date to be decided by the Contracting States pursuant to paragraph 2, after:
    - a) the deposit of the thirtieth instrument of ratification, acceptance or approval; and
    - b) the deposit of instruments of ratification, acceptance or approval by Contracting States representing a total of 600 points or more as set out in Annex I.
  2. The Depositary shall convene a meeting of the Contracting States within three months after the conditions under paragraph 1 are met in order for the Contracting States to decide whether and on what date to bring the Convention into force, taking into account in particular the level of participation of Contracting States expected to have obligations to eliminate double taxation, as well as the goal of ensuring that the Contracting States are geographically diverse and account for approximately 60 per cent or more of worldwide Gross Domestic Product.
- A decision to bring the Convention into force shall be adopted if it is supported by:
- a) a simple majority of the Contracting States at the time the meeting is convened; and
  - b) Contracting States representing a total of 600 points or more as set out in Annex I.
3. If a decision to bring the Convention into force is not reached at the meeting convened under paragraph 2, the Depositary shall invite the Contracting States to meet every six months, or a longer period if decided by the Contracting States, to consider the matter, until such a decision is reached.
  4. In the case of a Signatory ratifying, accepting, or approving this Convention after the decision on the date of entry into force of the Convention has been made in accordance with paragraph 2, the Convention shall enter into force for that Signatory on the later of the date of entry into force of this Convention determined under paragraph 1 and the first day of the calendar month following the expiration of a period of three months beginning on the date of the deposit by such Signatory of its instrument of ratification, acceptance or approval.

#### **Article 49 – Entry into Effect**

1. The provisions of this Convention shall have effect in a Party with respect to any Period of a Covered Group beginning on or after the first day of the next calendar year that begins on or after the expiration of a period of six months from the date on which this Convention enters into force for that Party.
2. Notwithstanding paragraph 1 and subject to paragraph 3, the provisions of this Convention shall have effect in a Party with respect to the Covered Group on the first day of the calendar year described in paragraph 1 (the "date of entry into effect") if:<sup>9</sup>
  - a) a Group Entity of a Covered Group was subject to tax with respect to one of the measures listed in Annex A in the calendar year preceding the calendar year described in paragraph 1;
  - b) the Period of the Covered Group in which the date of entry into effect falls ends on or after the 1st of April; and
  - c) the Convention has entered into force in that Party as per Article 48(1).
3. For a Covered Group to which paragraph 2 applies:
  - a) the application of this Convention to the Period in which the date of entry into effect falls (the "initial Period") shall be modified as follows:
    - i) the amount of Amount A Profit that may be taxed in a Party for the initial Period in accordance with Article 4(1) and (2), shall be the Amount A Profit that may be taxed in that Party for the initial Period under Article 4 multiplied by the number of days from the date of entry into effect until the end of the initial Period and divided by the total number of days in the initial Period;
    - ii) the portion of the *Amount A relief amount* allocated to each *specified jurisdiction* under Article 11(6) through (15) shall be the *Amount A relief amount* allocated to that specified jurisdiction multiplied by the number of days from the date of entry into effect until the end of the initial Period and divided by the total number of days in the initial Period;
    - iii) if the number of days from the date of entry into effect until the end of the initial Period is fewer than 183 days, the following phases shall be extended so as to include the initial Period:
      - A) the *initial revenue sourcing transitional phase*, the *initial extractives transitional phase*, the *regulated financial services transitional period*, and the *mixed segment entity transitional period* described in Annex E Section 1;
      - B) the transition period with respect to the Withholding Tax Upward Adjustment described in Annex B Section 6(7); and
      - C) the "first three Periods that follow the entry into effect of this Convention" as provided in Article 34(3)(a); and
  - b) the *prior unallocated Amount A relief* of the Covered Group for the Period following the initial Period under Article 11(2)(c) shall be equal to the greater of zero or the amount determined by:
    - i) subtracting the *Amount A relief amount* of the Covered Group in the initial Period from the Amount A Profit of the Covered Group in the initial Period; then

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<sup>9</sup> India has expressed an objection to paragraph 2, which extends to Article 49(3) below.

- ii) multiplying the result by the number of days from the date of entry into effect until the end of the initial Period and dividing by the total number of days in the initial Period.
4. Article 38(1) shall have effect in a Party as from the first day of the next calendar year that begins on or after the expiration of a period of six months from the date on which this Convention enters into force for that Party.
  5. Notwithstanding the preceding provisions of this Article, the following provisions shall have effect in each Party from the date of entry into force of this Convention for that Party, without regard to the Period to which the matter relates:
    - a) Annex F Section 3 (Establishing a Standing Pool Comprising Independent Experts established for purposes of Amount A Determination Panels under Article 28);
    - b) Annex H (Review Process and Early Clarification on Digital Services Taxes and Relevant Similar Measures).
  6. The provisions of Article 47 shall have effect from the date of entry into force of this Convention.
  7. Notwithstanding the preceding provisions of this Article, the provisions of this Convention shall have effect in each Party with respect to an Existing Tax Agreement from the latest of the dates on which this Convention enters into force for each of the parties to the Existing Tax Agreement.

### ***Article 50 – Withdrawal***

1. After an initial period of five years after the entry into force of this Convention in accordance with Article 48(1).<sup>10</sup>
  - a) any Party may, at any time, notify the Depositary of its intention to withdraw from this Convention; and
  - b) a Party that has made a declaration under Article 42(1) may withdraw that declaration with respect to such a Jurisdiction by notifying the Depositary of its intention not to apply the Convention with respect to that Jurisdiction.

The Depositary shall inform the Parties and Signatories of any notification of withdrawal.

2. Withdrawal pursuant to paragraph 1 shall have effect in the Party with respect to any Period beginning on or after the first day of the next calendar year that begins on or after the expiration of a period of twelve months beginning on the date of receipt of the notification of withdrawal by the Depositary, unless the Party retracts its withdrawal before that time by means of a notification addressed to the Depositary.
3. A meeting of the Conference of the Parties may be convened by the Depositary following receipt of a notification of withdrawal, in order to discuss the matter.

### ***Article 51 – Termination***

1. The Parties may decide, by consensus, to terminate this Convention as of a specified date.

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<sup>10</sup> India has expressed an objection to paragraph 1.



2. If the withdrawal of any Party from this Convention pursuant to Article 50 causes the total points represented by the remaining Parties, as set out in Annex I, or in the most recently updated assignment of points pursuant to Article 47(4), to fall below 550 points, the Convention shall terminate as of the effective date of that withdrawal.
3. If the Convention is terminated pursuant to Article 43(7), the Convention shall terminate on the date that is three months after the date described in Article 43(6).
4. The termination of this Convention shall have effect with respect to any Period beginning on or after the date of termination.

### ***Article 52 – Relation with Protocols***

1. This Convention may be supplemented by one or more protocols.
2. In order to become a party to a protocol, a State shall also be a Party to this Convention.
3. A Party to this Convention is not bound by a protocol unless it becomes a party to the protocol in accordance with its provisions.

### ***Article 53 – Depositary***

1. The Secretary-General of the Organisation for Economic Co-operation and Development shall be the Depositary of this Convention and any protocols pursuant to Article 52.
2. The Depositary shall:
  - a) notify the Parties and Signatories within one month of:
    - i) any notification regarding assistance in the collection of revenue claims pursuant to Article 37(10);
    - ii) any notification regarding service of documents pursuant to Article 37(11);
    - iii) any signature pursuant to Article 41 (Signature and Ratification, Acceptance or Approval);
    - iv) the deposit of any instrument of ratification, acceptance or approval pursuant to Article 41 (Signature and Ratification, Acceptance or Approval);
    - v) the date on which the implementation of the Convention is deemed successful pursuant to Article 43 (Review Process to Lower the Adjusted Revenue Threshold);
    - vi) any proposed amendment to this Convention pursuant to Article 44 (Amendment);
    - vii) a decision of the Contracting States on the date of entry into force of the Convention pursuant to Article 48 (Entry into Force);
    - viii) any notification of withdrawal from this Convention pursuant to Article 50 (Withdrawal);

- ix) any event resulting in the termination of this Convention pursuant to Article 51 (Termination); or
- x) any other communication related to this Convention; and
- b) maintain publicly available lists of:
  - i) Parties for which the provisions of this Convention are in effect pursuant to Article 49 (Entry into effect); and
  - ii) notifications made by the Parties.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Paris, the [x] day of [month year], in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Organisation for Economic Co-operation and Development.

## ANNEX A – LIST OF EXISTING MEASURES SUBJECT TO REMOVAL

*[It is understood by the negotiators that this list of existing measures will not be considered evidence as to whether the measures it includes are digital services taxes or relevant similar measures, nor shall it determine the measures' treatment for any other purposes than the application of the Convention after it enters into effect.]*

**Table 1. Annex–A - List of Existing Measures Subject to Removal**

Enacting Jurisdiction	Description of the Measure	Legal Act	Effective Date
Austria	Digital Services Tax	Digital Tax Act 2020	1 January 2020
France	Digital Services Tax	Law no. 759/2019	1 January 2019
India	Equalisation levy on online advertisement services	Finance Act 2016 (Law no. 28/2016), Section 165	1 April 2016
India	Equalisation levy on e-commerce	Finance Act 2016 (Law no. 28/2016), Section 165A	1 April 2020
Italy	Digital Services Tax	Budget Law 2019 (Law no. 145/2018), Article 1, Subsections 35-49	1 January 2020
Spain	Digital Services Tax	Law no. 4/2020, of October 15	15 January 2021
Tunisia	Digital Services Tax	Finance Law 2020 (Law no. 78/2019), Article 27	1 January 2020
Türkiye	Digital Services Tax	Law no. 7194, Articles 1-7	1 March 2020
United Kingdom	Digital Services Tax	Finance Act 2020 (2020 c. 14), Part 2	1 April 2020

## ANNEX B – SUPPLEMENTARY DEFINITIONS RELATED TO ARTICLE 2

### **Section 1 – Excluded Entities**

For purposes of this Convention, the following definitions apply:

- a) the term “governmental entity” means an Entity:
  - i) that is part of or wholly-owned by a government (including any political subdivision or local authority thereof);
  - ii) that does not carry on a trade or business;
  - iii) that has the principal purpose of:
    - A) fulfilling a government function; or
    - B) managing or investing that government’s or Jurisdiction’s assets through the making and holding of investments, asset management, and related investment activities for the government’s or Jurisdiction’s assets;
  - iv) that is accountable to the government on its overall performance, and provides annual information reporting to the government; and
  - v) whose assets vest in such government upon dissolution and to the extent it distributes net earnings, such net earnings are distributed solely to such government with no portion of its net earnings inuring to the benefit of any private person.
- b) the term “international organisation” means any intergovernmental organisation (including a supranational organisation) or wholly-owned agency or instrumentality thereof that meets all of the following conditions:
  - i) it is comprised primarily of governments;
  - ii) it has in effect a headquarters or substantially similar agreement with the Jurisdiction in which it is established; and
  - iii) law or its governing documents prevent its income inuring to the benefit of private persons.
- c) the term “investment fund” means an Entity that meets all of the following conditions:
  - i) it is designed to pool assets (which may be financial and non-financial) from a number of investors (some of which are not *connected*);
  - ii) it invests in accordance with a defined investment policy;
  - iii) it allows investors to reduce transaction, research, and analytical costs, or to spread risk collectively;
  - iv) it is primarily designed to generate investment income or gains, or to provide protection against a particular or general event or outcome;

- v) investors have a right to return from the assets of the fund or income earned on those assets, based on the contributions made by those investors;
  - vi) the Entity or its management is subject to a regulatory regime in the Jurisdiction in which it is established or managed (including appropriate anti-money laundering and investor protection regulation); and
  - vii) it is managed by investment fund management professionals on behalf of the investors.
- d) the term “non-profit organisation” means an Entity that meets all of the following conditions:
- i) it is established and operated in its jurisdiction of residence:
    - A) exclusively for religious, charitable, scientific, artistic, cultural, athletic, educational, or other similar purposes; or
    - B) as a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
  - ii) substantially all of the income from the activities mentioned in subparagraph (a) is exempt from income tax in its jurisdiction of residence;
  - iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - iv) the income or assets of the Entity may not be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than:
    - A) pursuant to the conduct of the Entity’s charitable activities;
    - B) as payment of reasonable compensation for services rendered or for the use of property or capital; or
    - C) as payment representing the fair market value of property which the Entity has purchased, and
  - v) upon termination, liquidation or dissolution of the Entity, all of its assets must be distributed or revert to a *non-profit organisation* or to the government (including any *governmental entity*) of the Entity’s jurisdiction of residence or any political subdivision thereof;

but does not include any Entity carrying on a trade or business that is not directly related to the purposes for which it was established.

- e) the term “pension fund” means:
- i) an Entity established and operated in a Jurisdiction exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals, if:
    - A) the Entity is regulated as such by that Jurisdiction or one of its political subdivisions or local authorities; or
    - B) those benefits are secured or otherwise protected by national regulations and funded by a pool of assets held through a fiduciary arrangement or trust to secure

the fulfilment of the corresponding pension obligations against a case of insolvency of a Group to which the Entity belongs; and

- ii) a *pension services entity*;
- f) the term “pension services entity” means an Entity that is established and operated exclusively or almost exclusively:
- i) to invest funds for the benefit of Entities referred to in subparagraph (e)(i); or
  - ii) to carry out activities that are ancillary to those regulated activities carried out by the Entities referred to in subparagraph (e)(i) provided that they are members of the same Group as the Entity;
- g) the term “real estate investment vehicle” means an Entity the taxation of which achieves a single level of taxation either in its hands or the hands of its interest holders (with at most one year of deferral), provided that that Entity holds predominantly immovable property and is itself widely held;
- h) For purposes of subparagraph (c)(i), a person shall be considered to be “connected” to another person if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons or, in the case of individuals, they are Family Members of the same family. In any case, a person shall be considered to be “connected” to another person if:
- i) one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company’s shares or of the beneficial equity interest that carries rights to the profits, capital or reserves of the company);
  - ii) another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company’s shares or of the beneficial equity interest that carries rights to the profits, capital or reserves of the company) in each person; or
  - iii) in the case of two or more companies, more than 50 per cent of the aggregate vote and value of each company’s shares or of the beneficial equity interest that carries rights to the profits, capital or reserves of each company are possessed by individuals that are Family Members of the same family.

## **Section 2 – Adjusted Profit Before Tax of a Covered Group**

1. For purposes of this Convention, the term “Adjusted Profit Before Tax” for a Period means the Financial Accounting Profit (or Loss) of the Covered Group for that Period after:

- a) reversing the inclusion of the following items of income and the deduction of the following expenses:
  - i) current and deferred income tax expense (or income);
  - ii) dividends or other distributions received or accrued in respect of a Specified Equity Interest;
  - iii) gain, profit or loss arising from:

- A) disposition of a Specified Equity Interest;
  - B) changes in the fair value of a Specified Equity Interest; and
  - C) a Specified Equity Interest included under the equity method of accounting, other than profit or loss derived from a Joint Venture in which the Covered Group has joint control unless that Joint Venture is the Ultimate Parent Entity of another Covered Group;
- iv) expenses incurred with respect to payments that are illegal under the laws applicable to the Ultimate Parent Entity, the Group Entity that made the payments or the Group Entity that incurred the expenses;
  - v) expenses for any fine or penalty imposed on a Group Entity that is equal to or greater than EUR 50 000 per occurrence (or in the case of a fine or penalty imposed on a periodic basis until corrective action is taken, in the aggregate within a single Period) or an equivalent amount in the functional currency in which the Group Entity's Entity Financial Accounting Profit (or Loss) was calculated.
- b) making the following adjustments:
- i) with respect to any assets and liabilities that are subject to fair value or impairment accounting in the Consolidated Financial Statements, other than equity interests covered by subparagraph (a)(iii)(B):
    - A) excluding all gains or losses attributable to fair value or impairment accounting; and
    - B) including gains and losses on such assets or liabilities only when realised upon a disposition or liquidation, treating the carrying value of the asset or liability for the purpose of calculating that gain or loss as its carrying value at the date the asset was acquired or the liability was incurred less the sum of any depreciation or amortisation that was determined for the asset or liability and included in Financial Accounting Profit (or Loss) of the Covered Group since acquisition;
  - ii) where a Group Entity of a Covered Group acquires an equity interest in another Entity on or after the date of entry into effect described in Article 49 that causes the acquired Entity to become a Group Entity of the same Covered Group, and the total consideration paid by the Covered Group to acquire such equity interest exceeds EUR 10 million, treating any assets or liabilities of the acquired Group Entity as having a carrying value immediately after the acquisition that is the same as the carrying value attributable to those assets or liabilities in the hands of the acquired Group Entity immediately before the acquisition for purposes of:
    - A) calculating any depreciation, amortisation or other impairment amount with respect to those assets or liabilities; and
    - B) calculating any gain or loss in the event of the disposition of those assets or liabilities by a Group Entity after deducting any depreciation, amortisation or other impairment amount determined under clause (A); and
  - iii) in the case of a disposition of an asset other than inventory that occurs on or after the date of entry into effect described in Article 49 that results in a gain or loss from the disposal that exceeds EUR 10 million, allocating any gain or loss recognised upon the disposition evenly among the Period in which the disposition occurs and the four subsequent Periods.

- c) making the *prior period adjustment*;
- d) excluding the sum of the Entity Financial Accounting Profit (or Loss) of all Excluded Entities;
- e) deducting *relevant net losses*, in the chronological order of the prior Period(s) to which such *relevant net losses* correspond and only up to the amount of the Financial Accounting Profit (or Loss) in the Period after making the adjustments described in subparagraphs (a) through (d).

2. The “prior period adjustment” for a Period means an adjustment corresponding to all changes in the opening equity of the Period that:

- a) relate to a correction of an error in the determination of the Financial Accounting Profit (or Loss) or a change in an accounting principle or policy; and
- b) are attributable to transactions or other events that would have impacted the determination of Adjusted Profit Before Tax for:
  - i) a prior Period when the Covered Group was a Covered Group; or
  - ii) a prior Period that would be an *eligible prior period* but for the requirement that there be an *unused loss* with respect to that prior Period, had they initially been recorded in the prior Period on the same basis as that reflected in the relevant changes in the opening equity of the Period;
- c) Where the *prior period adjustment* in the Period exceeds EUR 10 million, it will be recognised in equal amounts over the current Period plus the greater of:
  - i) the two subsequent Periods; or
  - ii) the number of subsequent Periods equal to the number of Periods to which the *prior period adjustment* in the Period relates minus one.

3. For purposes of paragraph 1(e), “relevant net losses” are the sum of:

- a) the *eligible net losses* of the Covered Group; and
- b) any *transferred losses* available pursuant to an *eligible business combination* or an *eligible division*, calculated under paragraph 4, if:
  - i) throughout the twelve months immediately preceding the *eligible business combination* or *eligible division*, the *transferred entity or group* or the part of the *predecessor group* that is transferred to the Covered Group carried on the same or similar business(es) as it did immediately before the *eligible business combination* or *eligible division*; and
  - ii) throughout the 24 months immediately following the *eligible business combination* or *eligible division*, the Covered Group carries on the same or similar business(es) as the *transferred entity or group* or the part of the *predecessor group* that is transferred to the Covered Group carried on immediately before the *eligible business combination* or *eligible division*; and
  - iii) the Covered Group elects the application of this subparagraph in the first Period ending after the *eligible business combination* or *eligible division* in which the Covered Group is a Covered Group;



- c) where a *disclosed segment* of the Covered Group was a *covered segment* in a prior Period, the following are disregarded in calculating *relevant net losses*:
- i) the *segment financial accounting profit (or loss)* of that *disclosed segment* (after making the relevant adjustments under Annex C Section 4(9)(d)(i) and (ii)) in respect of:
    - A) any Period in which the *disclosed segment* was a *covered segment*; and
    - B) any Period that was a *segment eligible prior period* of that *disclosed segment*; and
  - ii) any amount of *segment transferred losses* attributable to that *disclosed segment*.
4. “Transferred losses” comprise the following:
- a) following an *eligible business combination*, the total amount that would have been *relevant net losses* of the *transferred entity or group* at the time of the *eligible business combination*, determined as if the *eligible prior period(s)* of the *transferred entity or group* included only prior Period(s) that would be *eligible prior period(s)* of the Covered Group if any *unused loss* of the *transferred entity or group* were an *unused loss* of the Covered Group; and
  - b) following an *eligible division*, the total amount that would have been *relevant net losses* of the *predecessor group* at the time of the *eligible division*, determined as if the *eligible prior period(s)* of the *predecessor group* included only prior Period(s) that would be *eligible prior period(s)* of the Covered Group if any *unused loss* of the *predecessor group* were an *unused loss* of the Covered Group; multiplied by
    - i) the ratio calculated by dividing the opening equity reported in the Consolidated Financial Statements of the Covered Group in the Period immediately following the *eligible division* by the sum of the opening equity of each of the new Groups, including the Covered Group, resulting from that *eligible division* for that same Period; or
    - ii) the ratio calculated by using an *alternative loss allocation factor*, where the following two conditions are met:
      - A) the Covered Group elects to use an *alternative loss allocation factor*, for purposes of subparagraph (b), which most accurately reflects the relative size of the parts of the *predecessor group* that are transferred to each new Group, including the Covered Group, resulting from the *eligible division*; and
      - B) all new Groups, including the Covered Group, resulting from the *eligible division* use the same *alternative loss allocation factor* consistently for purposes of subparagraph (b).
5. The following definitions apply for purposes of this Section:
- a) the term “eligible net losses” means the total amount of cumulative Financial Accounting Losses that exceeds the total amount of cumulative Financial Accounting Profits over the *eligible prior period(s)*, after making the adjustments described in paragraph 1(a) through (d) for each *eligible prior period*. In computing *eligible net losses*, Financial Accounting Losses are used in the chronological order of the *eligible prior periods* in which they arise to offset Financial Accounting Profits of *eligible prior periods*;
  - b) the term “eligible prior period” means each Period:
    - i) starting with the earliest prior Period of a Covered Group in which there is an *unused loss*, and that begins on or after the later of:

- A) three years prior to the beginning of the first Period of the Covered Group for which the provisions of the Convention are in effect under Article 49; and
  - B) ten years prior to the beginning of the current Period; and
- ii) ending with the Period immediately preceding the current Period, irrespective of whether the Covered Group was a Covered Group in the prior Period(s);
- c) the term “predecessor group” of a Covered Group means a Group whose Ultimate Parent Entity has transferred part of its assets and liabilities to the Ultimate Parent Entity of the Covered Group in the context of an *eligible division*;
- d) the term “transferred entity or group” means an Entity or Group brought under the control of the Ultimate Parent Entity of a Covered Group in the context of an *eligible business combination*;
- e) the term “eligible business combination” means a transaction or arrangement that is reported as a business combination in the Consolidated Financial Statements of a Covered Group, where:
  - i) an Entity that was not a Group Entity of another Group at the time of the transaction or arrangement is transferred such that the Entity becomes a Group Entity of the Covered Group; or
  - ii) all or substantially all the assets and liabilities of another Group are transferred such that each of the transferred Group Entities of that other Group (collectively the “transferred group”) becomes a Group Entity of the Covered Group, and any non-transferred part of the transferred group is not a Group separate from the Covered Group following the transaction or arrangement;
- f) the term “eligible division” means a transaction or arrangement in which:
  - i) the Ultimate Parent Entity of one Group transfers all or substantially all of its assets and liabilities to two or more Entities that each become the Ultimate Parent Entity of a new Group, including the Covered Group, in exchange for the pro rata issue to its shareholders of stock or securities representing the capital of these new Groups; and
  - ii) the first-mentioned Group ceases to exist as a result of the transaction or arrangement;
- g) the term “alternative loss allocation factor” means, in respect of an *eligible division*:
  - i) the value of assets arising under contracts transferred as a result of the *eligible division*, as reported in the Consolidated Financial Statements of the *predecessor group* in the period immediately preceding the *eligible division*;
  - ii) the revenues derived from Group Entities of the *predecessor group* transferred as a result of the *eligible division*, as reported in the Consolidated Financial Statements of the *predecessor group* in the period immediately preceding the *eligible division*;
  - iii) the net book value of tangible and intangible assets transferred as a result of the *eligible division*, as reported in the Consolidated Financial Statements of the *predecessor group* in the Period immediately preceding the *eligible division*; or
  - iv) the headcount of staff transferred as a result of the *eligible division*;

- h) the term “unused loss” means a Financial Accounting Loss of a prior Period that has not been offset by Financial Accounting Profit of subsequent Period(s) (after making the adjustments in paragraph 1(a) through (d) in each Period, and disregarding any amount described in paragraph 3(c)) in accordance with paragraph 1(e).

### **Section 3 – Identification of the Designated Payment Entity**

1. If the Ultimate Parent Entity of a Covered Group is not a resident of a Party at the end of a Period, the Designated Payment Entity of that Covered Group for that Period shall be:

- a) subject to paragraph 2, the Group Entity that meets the following conditions at the end of the Period:
  - i) it is a resident of a Party;
  - ii) all of its Specified Equity Interests are held, directly or indirectly, by the Ultimate Parent Entity; and
  - iii) it has the highest total asset value in the Covered Group among the Group Entities that meet the requirements of subdivisions (i) and (ii), as included in financial statements prepared in accordance with an Acceptable Financial Accounting Standard (or, if no such statements are prepared, the highest total asset value as measured under such accounting standard);
- b) where no Designated Payment Entity is identified under subparagraph (a) for the Period, the Group Entity, if any, identified by applying subparagraph (a) with the word “all” in subparagraph (a)(ii) replaced by “more than 50 per cent”; or
- c) where no Designated Payment Entity is identified under subparagraphs (a) and (b) for the Period, the Group Entity identified by applying subparagraph (a) without regard to subparagraph (a)(ii).

2. Where all of the Specified Equity Interests of the Group Entity identified under paragraph 1 are held directly or indirectly by a Group Entity that meets the conditions in paragraph 1(a)(i) and (ii), that Group Entity will replace the Group Entity identified under paragraph 1 as the Designated Payment Entity. Where more than one Group Entity meets those conditions, the Designated Payment Entity shall be the Group Entity whose Specified Equity Interests are held most directly by the Ultimate Parent Entity.

3. A Party shall allow a Designated Payment Entity of a Covered Group identified under paragraph 1 for the Period immediately preceding a Period to elect to remain the Designated Payment Entity in the Period unless:

- a) the Ultimate Parent Entity of the Covered Group is a resident of a Party at the end of the Period;
- b) the Designated Payment Entity for the Period immediately preceding a Period is:
  - i) no longer part of the Covered Group in the Period; or
  - ii) no longer a resident of a Party in the Period;
- c) the Designated Payment Entity for the Period immediately preceding a Period was identified in accordance with paragraph 1(c) and in the Period a Group Entity of the Covered Group meets the conditions in paragraph 1(a) or (b); or

- d) the Designated Payment Entity for the Period immediately preceding a Period was identified in accordance with paragraph 1(b) and in the Period a Group Entity of the Covered Group meets the conditions in paragraph 1(a).

#### **Section 4 – Elimination Profit (or Loss)**

1. For purposes of this Convention, the Elimination Profit (or Loss) of a Covered Group for a Period in a Jurisdiction is the sum of the *entity elimination profit (or loss)* of each Group Entity located in that Jurisdiction and the *taxable presence elimination profit (or loss)* of each Taxable Presence located in that Jurisdiction for the Period, reduced by the *relevant elimination net losses* in that Jurisdiction pursuant to paragraph 6.

2. For purposes of this Convention, the term “entity elimination profit (or loss)” for a Period means the Entity Financial Accounting Profit (or Loss) of a Group Entity, other than a *regulated financial institution* or an *extractives entity*, for that Period after:

- a) reversing the inclusion of the following items of income and the deduction of the following expenses:
- i) current and deferred income tax expense (or income);
  - ii) dividends or other distributions received or accrued in respect of a Specified Equity Interest;
  - iii) gain, profit or loss arising from:
    - A) disposition of a Specified Equity Interest;
    - B) changes in the fair value of a Specified Equity Interest; and
    - C) a Specified Equity Interest included under the equity method of accounting, other than profit or loss derived from an unincorporated Joint Venture in which the Covered Group has joint control unless that Joint Venture is the Ultimate Parent Entity of another Covered Group;
  - iv) expenses incurred with respect to payments that are illegal under the laws applicable to the Ultimate Parent Entity, the Group Entity that made the payments or the Group Entity that incurred the expenses;
  - v) expenses for any fine or penalty imposed on a Group Entity that is equal to or greater than EUR 50 000 per occurrence (or in the case of a fine or penalty imposed on a periodic basis until corrective action is taken, in the aggregate within a single Period), or an equivalent amount in the functional currency in which the Group Entity's Entity Financial Accounting Profit (or Loss) was calculated;
  - vi) income from or expenses incurred with respect to compensation payments described in Article 13(9) to the extent that the compensation payment does not exceed the *Amount A compensation payment limit*;
  - vii) any *related investment revenue* of an Entity that is a Group Entity of a Group that includes a *regulated financial institution* and any expenses directly associated with *related investment revenue* of such a Group Entity;
- b) making the following adjustments:

- i) where a Group Entity of a Covered Group acquires an equity interest in another Entity on or after the date of entry into effect described in Article 49 that causes the acquired Entity to become a Group Entity of the same Covered Group, and the total consideration paid by the Group Entity to acquire such equity interest exceeds EUR 5 million, treating any assets or liabilities acquired by the Group Entity as having a carrying value immediately after the acquisition that is the same as the carrying value attributable to those assets or liabilities in the hands of the acquired Entity immediately before the acquisition for purposes of:
  - A) calculating any depreciation, amortisation or other impairment amount with respect to those assets or liabilities; and
  - B) calculating any gain or loss in the event of the disposition of those assets or liabilities by the Group Entity after deducting any depreciation, amortisation or other impairment amount determined under clause (A);
- ii) in the case of a disposition of an asset other than inventory that occurs on or after the date of entry into effect described in Article 49 that results in a gain or loss from the disposal that exceeds EUR 5 million, allocating any gain or loss remaining after adjustment under subparagraph (e) or (f) evenly among the Period in which the disposition occurs and the four subsequent Periods;
- iii) replacing the expense deducted in computing the Group Entity's Entity Financial Accounting Profit (or Loss) with respect to any stock-based compensation with the corresponding amount deducted for corporate income tax purposes in the Jurisdiction where the Group Entity is located;
- iv) including as income the total amount of stock-based compensation expense that was previously deducted in the computation of that Group Entity's Entity Financial Accounting Profit (or Loss) if that stock-based compensation arose in connection with an option that expired in the Period without exercise;
- v) replacing pension liability expenses and pension earnings that are related to a pension plan provided through a *pension fund* and that are included in computing the Group Entity's Entity Financial Accounting Profit (or Loss) with the amount of net contributions to the *pension fund* for the Period;
- vi) with respect to any assets and liabilities that are subject to fair value or impairment accounting in computing the Entity Financial Accounting Profit (or Loss), other than equity interests covered by subparagraph (a)(iii)(B):
  - A) excluding all gains or losses attributable to fair value or impairment accounting; and
  - B) including gains and losses on such assets or liabilities only when realised upon a disposition or liquidation, treating the carrying value of the asset or liability for the purpose of calculating that gain or loss as its carrying value at the date the asset was acquired or the liability was incurred less the sum of any depreciation or amortisation that was determined for the asset or liability and included in Entity Financial Accounting Profit (or Loss) of the Group Entity since acquisition;
- c) making the *profit allocation adjustment* with respect to *covered profit allocation transactions* to the extent that subparagraphs (e) and (f) do not apply;
- d) making the *prior period adjustment* referred to in Section 2(1)(c), subject to the following:

- i) the term “Financial Accounting Profit (or Loss)” in Section 2(2) shall be replaced by the term “Entity Financial Accounting Profit (or Loss)”;
- ii) the term “Adjusted Profit Before Tax” in Section 2(2) shall be replaced by the term “Elimination Profit (or Loss)”;
- iii) where the *prior period adjustment* of the Group Entity in the Period exceeds EUR 5 million, it will be recognised in equal amounts over the current Period plus the greater of:
  - A) the two subsequent Periods; or
  - B) the number of subsequent Periods equal to the number of Periods to which the *prior period adjustment* in the Period relates minus one; and
- iv) the *prior period adjustment* shall not apply with respect to a *covered profit allocation transaction*;
- e) making the *qualifying reorganisation adjustment*;
- f) reducing any gain or loss upon the transfer of an asset between Group Entities within five years of the transferor Group Entity becoming an Entity of the Covered Group, if:
  - i) the gain or loss from the disposal exceeds EUR 5 million; and
  - ii) the transferor Group Entity has not previously been an Entity of another Covered Group,

such that 20 per cent of the gain or loss remaining after the adjustment under subparagraph (e) is recognised for each full year that has elapsed between the date the transferor Entity joined the Group and the date of the transfer of the asset;
- g) making the *taxable equity transaction adjustment*;
- h) making the *tax fair value adjustment*;
- i) making the *main entity taxable presence adjustment*; and
- j) making the *withholding tax downward adjustment*.

3. The “taxable presence elimination profit (or loss)” of a Taxable Presence shall be determined by applying the following rules:

- a) the *taxable presence elimination profit (or loss)* of a Taxable Presence for a Period is the sum of:
  - i) the *taxable presence profit amount* of the Taxable Presence for the Period, as determined under subparagraph (b); and
  - ii) the total profit (or loss) treated as arising in the Period with respect to the Taxable Presence as a result of *taxable profit spreading adjustments* related to prior Periods, as determined under subparagraphs (c) and (d);
- b) the “taxable presence profit amount” of a Taxable Presence for a Period is:

- i) the amount of profit (or loss) attributable to that Taxable Presence for tax purposes with respect to any fiscal period ending during the Period in the latest *tax liability determination* for that Taxable Presence in its location that was filed or issued at least 60 days before the deadline for filing the Covered Group's Amount A Tax Return and Common Documentation Package for the Period; or
- ii) where there has been no *tax liability determination* as of the date described in subdivision (i) in the location of a Taxable Presence for a fiscal period ending during the Period:
  - A) the amount of profit (or loss) attributable to the Taxable Presence in its original domestic tax return for that fiscal period if an original domestic tax return for that fiscal period is filed after the date described in subdivision (i) and on or before the date on which the Covered Group's *Amount A Tax Return and Common Documentation Package* for the Period is due; or
  - B) zero in all other cases;
- c) if, as of the end of the current Period, the most recent *tax liability determination* with respect to a Taxable Presence in a prior Period in which the Group was a Covered Group, or a previously unrecognised Taxable Presence in a prior Period in which the Group was a Covered Group, would result in a change in the *taxable presence profit amount* for that Taxable Presence, and at least 75 per cent of any additional tax liability or tax refund associated with that *tax liability determination* has been paid, a "taxable profit spreading adjustment" shall be taken into account as follows:
  - i) if the change in the *taxable presence profit amount* is less than EUR 5 million, the change in *taxable presence profit amount* shall be taken into account entirely in the current Period as a *taxable profit spreading adjustment*;
  - ii) if the change in the *taxable presence profit amount* is at least EUR 5 million, then:
    - A) if there has been a change in *taxable presence profit amount* of at least EUR 5 million in a prior Period with respect to which the *taxable profit spreading adjustment* has not been fully taken into account, the amount of the *taxable profit spreading adjustment* from the current change and any remaining *taxable profit spreading adjustment* from the prior change shall be combined and the resulting net amount shall be spread equally over Periods beginning with the current Period and consisting of a total of the greater of:
      - 1) three Periods;
      - 2) the number of Periods to which the determination giving rise to the current change relates; and
      - 3) the number of remaining Periods over which the *taxable profit spreading adjustment* from the prior change are spread;
    - B) in all other cases, the amount of the *taxable profit spreading adjustment* shall be spread equally across a term beginning with the current Period and consisting of a total of the greater of:
      - 1) three Periods; and
      - 2) the number of Periods to which the determination giving rise to a change in the *taxable presence profit amount* relates;

- iii) where the *main entity* with a Taxable Presence leaves the Covered Group in a Period before a *taxable profit spreading adjustment* has been fully taken into account, the remaining amount shall be wholly included in the *taxable presence elimination profit (or loss)* of that Taxable Presence for that Period;
- d) With respect to each Taxable Presence in a prior Period, where:
  - i) the Group was not a Covered Group in the Period immediately preceding the current Period; and
  - ii) the most recent change in *taxable presence profit amount* prior to the Period with respect to that Taxable Presence resulted from a *tax liability determination* during a Period when the Group was not a Covered Group and less than two years before the beginning of the Period;

for the purpose of applying subparagraph (c), a change in the *taxable presence profit amount* will be recognised with respect to that Taxable Presence equal to:

- iii) the profit (or loss) amount for that Taxable Presence in the latest *tax liability determination* prior to the end of the current Period, less
  - iv) the profit (or loss) amount recognised in the latest *tax liability determination* with respect to that Taxable Presence during a prior Period where the Group was a Covered Group.
4. The following provisions are relevant for the purpose of applying this Section to a *flow-through entity*:
- a) the Entity Financial Accounting Profit (or Loss) of a Group Entity that is a *flow-through entity* is allocated as follows:
    - i) in the case of a Taxable Presence of a *flow-through entity*, the relevant portion of the Entity Financial Accounting Profit (or Loss) of the Group Entity is allocated to that Taxable Presence in accordance with paragraph 11;
    - ii) in the case of a *flow-through entity* that is not the Ultimate Parent Entity and is entirely a *tax transparent entity*, any Entity Financial Accounting Profit (or Loss) remaining after application of subdivision (i) is allocated to each Group Entity that directly or indirectly owns a Specified Equity Interest in the *tax transparent entity*, in proportion to their Specified Equity Interests;
    - iii) in the case of a *flow-through entity* that is not the Ultimate Parent Entity and is partially a *tax transparent entity* and is partially a *reverse hybrid entity*, any Entity Financial Accounting Profit (or Loss) remaining after application of subdivision (i) that is not attributable to shareholders for whom the *flow-through entity* is treated as a *reverse hybrid entity* is allocated to each Group Entity for whom the *flow-through entity* is treated as a *tax transparent entity* that directly or indirectly owns a Specified Equity Interest in the *tax transparent entity* in proportion to their Specified Equity Interests;
    - iv) with respect to all Entity Financial Accounting Profit (or Loss) of a *flow-through entity* that is not allocated to another Group Entity under subdivisions (i) through (iii) above, such Entity Financial Accounting Profit (or Loss) is retained in the *flow-through entity* itself;
  - b) the term “flow-through entity” means a Group Entity that is fiscally transparent with respect to its income, expenditure, profit or loss in the Jurisdiction where it was created unless it is tax resident and liable to a *covered tax* on its income or profit in another Jurisdiction;



- c) a *flow-through entity* is a “tax transparent entity” with respect to its income, expenditure, profit or loss to the extent that it is fiscally transparent in the Jurisdiction in which its owner or owners are located;
- d) a *flow-through entity* is a *reverse hybrid entity* with respect to its income, expenditure, profit or loss to the extent that it is not fiscally transparent in the Jurisdiction in which its owner or owners are located;
- e) an Entity is treated as fiscally transparent under the laws of a Jurisdiction if that Jurisdiction treats the income, expenditure, profit or loss of that Entity as if it were derived or incurred by the direct or indirect owners of that Entity in proportion to their interest in that Entity;
- f) notwithstanding subparagraphs (b) and (c), a Group Entity that is not a tax resident and not liable to a covered tax based on its place of management, place of incorporation, place of constitution, place of carrying on business, place of residence of controlling shareholders, place of head or main office or similar criteria in any Jurisdiction shall be treated as a *flow-through entity* and a *tax transparent entity* in respect of its income, expenditure, profit or loss to the extent that:
  - i) its owners are located in a Jurisdiction that treats the Entity as fiscally transparent;
  - ii) it does not have a place of business in the Jurisdiction where it was created; and
  - iii) the income, expenditure, profit or loss is not attributable to a Taxable Presence.

5. The following provisions apply for the purpose of determining the location of a Group Entity or a Taxable Presence for a Period:

- a) a Group Entity is located:
  - i) in the Jurisdiction in which it is liable to tax by reason of its place of management, place of creation, or other similar criteria; and
  - ii) where no Jurisdiction is described in subdivision (i), in the Jurisdiction in which it was created;
- b) a Taxable Presence shall be treated as located in the Jurisdiction, other than the Jurisdiction where the *main entity* is located, that imposes tax on a net basis with respect to the Taxable Presence;
- c) where, by reason of subparagraph (a), a Group Entity is located in more than one Jurisdiction, it shall be located in the Jurisdiction where it is considered to be a resident for purposes of an applicable *covered tax treaty* unless it is considered a resident of more than one Jurisdiction for purposes of an applicable *covered tax treaty*, or no *covered tax treaty* applies, in which case:
  - i) it shall be located in the Jurisdiction where it paid the greater amount of *covered taxes* for the fiscal year ending in the Period;
  - ii) if its location cannot be determined in accordance with subdivision (i), it shall be located in the Jurisdiction where it was created;
- d) where the location of a Group Entity changes during the Period, it shall be treated as located in each Jurisdiction in which it is located during the Period and its *entity elimination profit (or loss)* and *entity depreciation* and *entity payroll* will be determined for each of those Jurisdictions by reference to the ratio between the number of days it is located in each Jurisdiction and the total number of days in the Period;

- e) where the outcome of a mutual agreement procedure concluded during the current Period determines that the location of a Group Entity in one or more prior Period(s) that the Group was a Covered Group and the Entity was a Group Entity differs from the location of that Group Entity as reflected in the Covered Group's Amount A Tax Return and Common Documentation Package for those prior Period(s):
- i) a Taxable Presence shall be deemed to exist in both locations in the current Period;
  - ii) the *taxable presence elimination profit (or loss)* of the deemed Taxable Presence in the location of that Group Entity as reflected in the Covered Group's Amount A Tax Return and Common Documentation Package for those prior Period(s) shall be determined for the current Period by:
    - A) subtracting the *entity elimination profit (or loss)* of that Group Entity that was recognised before the determination under the mutual agreement procedure in Periods during which the Group was a Covered Group and the Entity was a Group Entity, then;
    - B) applying spreading provisions contained in paragraph 3(c) with respect to the net adjustment determined under clause (A) for all Periods subject to the determination;
  - iii) the *taxable presence elimination profit amount* of the deemed Taxable Presence in the location determined under the mutual agreement procedure for the current Period and future spreading Periods shall be determined by:
    - A) calculating the *entity elimination profit (or loss)* that would have been recognised in that Entity in that location in accordance with the determination made under the applicable mutual agreement procedure in Periods where the Group was a Covered Group and the Entity was a Group Entity, assuming spreading adjustments did not apply, then;
    - B) applying spreading provisions contained in paragraph 3(c) with respect to the net adjustment determined under clause (A) for all Periods covered by the applicable determination.

6. The following rules apply to determine the deduction under paragraph 1 for *relevant elimination net losses*:

- a) *relevant elimination net losses* in the Jurisdiction are deducted in the chronological order of the prior Period(s) to which such *relevant elimination net losses* correspond and only up to the amount, if greater than zero, of the sum of the *entity elimination profit (or loss)* of each Group Entity and the *taxable presence elimination profit (or loss)* of each Taxable Presence in that Jurisdiction for the Period;
- b) "Relevant elimination net losses" in a Jurisdiction are the sum of:
  - i) the *eligible elimination net losses* of the Covered Group in the Jurisdiction; and
  - ii) any *transferred elimination losses* available in the Jurisdiction pursuant to an *eligible business combination* or an *eligible division*, calculated under subparagraph (d), if the conditions described in Section 2(3)(b)(i) and (ii) are satisfied, and subject to subdivision (iii);

- iii) notwithstanding subdivision (ii), the Covered Group may elect not to deduct *transferred elimination losses* under subdivision (ii) in respect of an *eligible business combination* or *eligible division* if:
  - A) the Covered Group does not elect to deduct any *transferred losses* in respect of that *eligible business combination* or *eligible division* under Section 2(3)(b)(iii);
  - B) the Covered Group elects the application of this subdivision in the first Period ending after the *eligible business combination* or *eligible division* in which the Covered Group is a Covered Group; and
  - C) either:
    - 1) the following two conditions are met:
      - (i) the sum of *tax losses* of each Group Entity of the *transferred entity or group* or *predecessor group* located in the Jurisdiction is less than EUR 2 million at the end of the Period immediately preceding the *eligible business combination* or *eligible division*; and
      - (ii) different Group Entities or Taxable Presences, if any, of the *transferred entity or group* or *predecessor group* were located in two or more Jurisdictions in the Period immediately preceding the *eligible business combination* or *eligible division*; or
    - 2) the *eligible business combination* or *eligible division* occurred more than two calendar years prior to the beginning of the Period in which the Covered Group was a Covered Group for the first time.
- c) “Eligible elimination net losses” in a Jurisdiction are the total amount of cumulative Elimination Losses in excess of the total amount of cumulative Elimination Profits in the Jurisdiction over the *elimination eligible prior period(s)* before deduction of any *relevant elimination net losses* in such *elimination eligible prior period(s)*. In computing *eligible elimination net losses*, the Elimination Losses are used in the chronological order of the *elimination eligible prior periods* in which they arise to offset Elimination Profits of the *elimination eligible prior periods*.
- d) “Transferred elimination losses” in a Jurisdiction comprise:
  - i) following an *eligible business combination*, the total amount that would have been *relevant elimination net losses* of the *transferred entity or group* in the Jurisdiction at the time of the *eligible business combination*, determined as if the *elimination eligible prior period(s)* of the *transferred entity or group* included only prior Period(s) that would be *elimination eligible prior period(s)* of the Covered Group if any *unused elimination loss* of the *transferred entity or group* were an *unused elimination loss* of the Covered Group; and
  - ii) following an *eligible division*, the total amount that would have been *relevant elimination net losses* of the *predecessor group* in the Jurisdiction at the time of the *eligible division*, determined:
    - A) as if the *elimination eligible prior period(s)* of the *predecessor group* included only prior Period(s) that would be *elimination eligible prior period(s)* of the Covered Group if any *unused elimination loss* of the *predecessor group* were an *unused elimination loss* of the Covered Group; and

- B) with reference only to the Group Entities and Taxable Presences, if any, of the *predecessor group* that become Group Entities and Taxable Presences, as applicable, of the Covered Group as a result of the *eligible division*.

7. The “profit allocation adjustment” shall be determined by applying the following rules:

- a) the “profit allocation adjustment” for a Group Entity in a Jurisdiction for a Period is the sum of:
  - i) the “profit allocation amount” as determined under subparagraph (b) with respect to each:
    - A) *covered profit allocation transaction* for which the Group Entity included income or expense in the computation of its Entity Financial Accounting Profit (or Loss) for the Period; and
    - B) *covered profit allocation transaction* that was not included in computation of its Entity Financial Accounting Profit (or Loss) for the Period that is subject to a *tax liability determination* with respect to the Period;
  - ii) the total *profit allocation spreading adjustments* in the Period related to *covered profit allocation transactions* in prior Periods, as determined under subparagraphs (c) and (d);
- b) the “profit allocation amount” of a Group Entity in a Jurisdiction for a Period is the difference between the amount of income or expense included during the Period for the purpose of computing its Entity Financial Accounting Profit (or Loss) from each *covered profit allocation transaction* and the transaction value for tax purposes in the latest *tax liability determination* for that *covered profit allocation transaction* in the Jurisdiction that was filed or issued at least 60 days before the deadline for filing the Covered Group’s Amount A Tax Return and Common Documentation Package for the Period;
- c) if, as of the end of the current Period, the most recent *tax liability determination* with respect to a *covered profit allocation transaction* in a prior Period in which the Group was a Covered Group, or a previously unrecognised *covered profit allocation transaction* in a prior Period in which the Group was a Covered Group, would result in a change in the *profit allocation amount* for that *covered profit allocation transaction*, and at least 75 per cent of any additional tax liability or tax refund associated with that *tax liability determination* has been paid, a “profit allocation spreading adjustment” shall be taken into account as follows:
  - i) if the change in the *profit allocation amount* is less than EUR 5 million, the change in *profit allocation amount* shall be taken into account entirely in the current Period as a *profit allocation spreading adjustment*;
  - ii) if the change in the *profit allocation amount* is at least EUR 5 million, then:
    - A) if there has been a change in *profit allocation amount* of at least EUR 5 million in a prior Period relating to the same *covered profit allocation transaction* with respect to which the *profit allocation spreading adjustment* has not been fully taken into account, the amount of the *profit allocation spreading adjustment* from the current change and any remaining *profit allocation spreading adjustment* from the prior change shall be combined and the resulting net amount shall be spread equally over Periods beginning with the current Period and consisting of a total of the greater of:
      - 1) three Periods;

- 2) the number of Periods to which the determination giving rise to the current change relates; and
  - 3) the number of remaining Periods over which the *profit allocation spreading adjustment* from the prior change are spread;
- B) in all other cases, the amount of the *profit allocation spreading adjustment* shall be spread equally across a term beginning with the current Period and consisting of a total of the greater of:
- 1) three Periods; and
  - 2) the number of Periods to which the determination giving rise to a change in the *profit allocation amount* relates;
- iii) where the Group Entity leaves the Covered Group in a Period before a *profit allocation spreading adjustment* has been fully taken into account, the remaining amount shall be wholly included in that Period;
- d) with respect to a *covered profit allocation transaction* of a Group Entity that occurred in a prior Period, where:
- i) the Group was not a Covered Group in the Period immediately preceding the current Period; and
  - ii) the most recent change in *profit allocation amount* prior to the Period with respect to a *covered profit allocation transaction* resulted from a *tax liability determination* during a Period when the Group was not a Covered Group and less than two years before the beginning of the Period;

for the purpose of applying subparagraph (c), a change in the *profit allocation amount* with respect to the *covered profit allocation transaction* will be recognised equal to:

- iii) the relevant *profit allocation amount* in the latest *tax liability determination* prior to the end of the current Period, less
- iv) the relevant *profit allocation amount* recognised in the latest *tax liability determination* with respect to that *covered profit allocation transaction* during a prior Period where the Group was a Covered Group.

8. The “qualifying reorganisation adjustment” for a Period means an adjustment made where a Group Entity engages in a *qualifying reorganisation* that is calculated as follows:

- a) A Group Entity that has disposed of assets or liabilities in a *qualifying reorganisation* shall exclude any gain or loss on the disposition from its Entity Financial Accounting Profit (or Loss) if it is wholly exempt from tax. If the disposing Group Entity is partly exempt from tax, it shall include the lesser of the gain or loss arising in connection with the *qualifying reorganisation* that is subject to tax and the gain or loss included in Entity Financial Accounting Profit (or Loss) in connection with the *qualifying reorganisation*.
- b) A Group Entity that has acquired assets or liabilities in a *qualifying reorganisation* shall determine its Entity Financial Accounting Profit (or Loss) after the acquisition using the carrying values of the acquired assets and liabilities as reflected in the financial statements of the disposing Group Entity at the date of disposition, adjusted to reflect any partial exclusion under subparagraph (a).

9. The “taxable equity transaction adjustment” for a Period shall be determined by applying the following rules:

- a) Where the Jurisdiction in which the target Group Entity is located (or, in the case of a *tax transparent entity*, the Jurisdiction in which the assets are located) treats the acquisition or disposition of an equity interest in that investee in the same or similar manner as an acquisition or disposition of the assets and liabilities and imposes a *covered tax* on the seller based on the difference between the tax basis and the consideration provided in exchange for the equity interest or the fair value of the assets and liabilities the seller shall include the gain to the extent that it is liable to tax on the gain in its *entity elimination profit (or loss)*.
- b) In cases where a *taxable equity transaction adjustment* applies, where the seller is located in a different Jurisdiction to the Jurisdiction in which it is liable to tax on the transaction, the taxation of that gain (or loss) shall be deemed to give rise to a Taxable Presence in that Jurisdiction and the *taxable equity transaction adjustment* should be included in the *taxable presence elimination profit (or loss)* of that Taxable Presence.

10. The “tax fair value adjustment” for a Group Entity means an adjustment of the basis of its assets and the amount of its liabilities to fair value for tax purposes in the Jurisdiction in which it is located for a Period, determined by:

- a) include in the computation of its *entity elimination profit (or loss)* an amount of gain or loss in respect of each of its assets and liabilities that is equal to the difference between the carrying value for financial accounting purposes, subject to adjustments otherwise determined for purposes of this Convention, of the asset or liability immediately before the event that triggered the tax adjustment (the triggering event) and the fair value of the asset or liability immediately after the triggering event, decreased (or increased) by the lesser of the gain or loss that is subject to deferral in connection with the *qualifying reorganisation*, if any, that is subject to tax and the financial accounting gain or loss arising in connection with the *qualifying reorganisation*;
- b) use the fair value for financial accounting purposes for each of its assets and liabilities immediately after the triggering event to determine the *entity elimination profit (or loss)* in Periods ending after the triggering event; and
- c) include the net total of the amounts determined in subparagraph (a) in the Group Entity’s *entity elimination profit (or loss)* as follows:
  - i) where the net total of the amounts equals or exceeds EUR 5 million, an amount equal to the net total of the amounts divided by five is included in the Period in which the triggering event occurs and in each of the immediate four subsequent Periods, unless the Group Entity leaves the Covered Group in a Period within this period, in which case the remaining amount will be wholly included in that Period;
  - ii) where the net total of the amounts is less than EUR 5 million, the net total of the amounts is included in the Period in which the triggering event occurs.

11. The “main entity taxable presence adjustment” shall be determined by applying the following rules:

- a) the *main entity taxable presence adjustment* of a *main entity* with respect to one or more Taxable Presences for a Period is the sum of:
  - i) the *excluded profit amount* of the *main entity* with respect to each Taxable Presence for the Period, as determined under subparagraph (b); and

- ii) the total profit (or loss) treated as arising in the Period as a result of *excluded profit spreading adjustments* related to prior Periods, as determined under subparagraphs (c) and (d);
- b) the “excluded profit amount” of a *main entity* in a Jurisdiction with respect to a Taxable Presence for a Period is the amount of profit attributable to the Taxable Presence with respect to any fiscal period ending during the Period with respect to which the *main entity* benefits from relief of double taxation in the latest *tax liability determination* of the *main entity* in the Jurisdiction that was filed or issued at least 60 days before the deadline for filing the Covered Group’s Amount A Tax Return and Common Documentation Package for the Period;
- c) if, as of the end of the current Period, the most recent *tax liability determination* for a *main entity* with respect to a Taxable Presence in a prior Period in which the Group was a Covered Group, or a Taxable Presence previously unrecognised with respect to the *main entity* in a prior Period in which the Group was a Covered Group, would result in a change in the *excluded profit amount* for that *main entity*, and at least 75 per cent of any additional tax liability or tax refund associated with that *tax liability determination* has been paid, an “excluded profit spreading adjustment” shall be taken into account as follows:
  - i) if the change in the *excluded profit amount* is less than EUR 5 million, the change in *excluded profit amount* shall be taken into account entirely in the current Period as an *excluded profit spreading adjustment*;
  - ii) if the change in the *excluded profit amount* is at least EUR 5 million, then:
    - A) if there has been a change in the *excluded profit amount* of at least EUR 5 million in a prior Period relating to the same *main entity* with respect to which the *excluded profit spreading adjustment* has not been fully taken into account, the amount of *excluded profit spreading adjustment* from the current change and any remaining *excluded profit spreading adjustment* from the prior change shall be combined and the resulting net amount shall be spread equally over Periods beginning with the current Period and consisting of a total of the greater of:
      - 1) three Periods;
      - 2) the number of Periods to which the determination giving rise to the current change relates; and
      - 3) the number of remaining Periods over which the *excluded profit spreading adjustment* from the prior change are spread; and
    - B) in all other cases, the amount of the *excluded profit spreading adjustment* shall be spread equally across a term beginning with the current Period and consisting of a total of the greater of:
      - 1) three Periods; and
      - 2) the number of Periods to which the determination giving rise to a change in the *excluded profit amount* relates;
  - iii) where the *main entity* leaves the Covered Group in a Period before an *excluded profit spreading adjustment* has been fully taken into account, the remaining amount shall be wholly included in that Period;
- d) with respect to each Taxable Presence of a *main entity*, where:

- i) the Group was not a Covered Group in the Period immediately preceding the current Period; and
- ii) the most recent change in *excluded profit amount* for that *main entity* relating to that Taxable Presence prior to the Period resulted from a *tax liability determination* during a Period when the Group was not a Covered Group and less than two years before the beginning of the Period;

for the purpose of applying subparagraph (c), a change in the *excluded profit amount* will be recognised for that *main entity* relating to that Taxable Presence equal to:

- iii) the relevant *excluded profit amount* for determination of double tax relief in the latest *tax liability determination* prior to the end of the current Period, less
- iv) the relevant *excluded profit amount* for determination of double tax relief recognised in the latest *tax liability determination* with respect to that *main entity* during a prior Period where the Group was a Covered Group.

12. The “withholding tax downward adjustment” shall apply to a Group Entity that received a Covered Payment subject to a Covered Withholding Tax, provided that such Group Entity is located in a Jurisdiction where it is liable to tax, and that Jurisdiction has a comprehensive legal mechanism to provide for the elimination of double taxation in respect of the Covered Withholding Tax.<sup>11</sup> The amount of the adjustment shall be determined by applying the following rules:

- a) the *withholding tax downward adjustment* for the Group Entity for the Period is the sum of:
  - i) the *current withholding tax downward adjustment* with respect to each Covered Payment made during the Period as determined under subparagraph (b); and
  - ii) the *withholding tax downward spreading adjustment* in the Period determined under subparagraphs (c) and (d) with respect to each Covered Payment made in prior Periods;
- b) the “current withholding tax downward adjustment” for the Group Entity for the Period is equal to the *withholding tax downward amount* with respect to a Covered Payment made during the Period identified with reference to the latest *tax liability determination* in respect of the Covered Payment that was filed or issued at least 60 days before the deadline for filing the Covered Group’s Amount A Tax Return and Common Documentation Package for the Period;
- c) if, as of the end of the current Period, the most recent *tax liability determination* in the Jurisdiction that imposed the Covered Withholding Tax with respect to a Covered Payment in a prior Period in which the Group was a Covered Group or a previously unrecognised Covered Payment in a prior Period in which the Group was a Covered Group would result in a change in a *withholding tax downward amount* for that Covered Payment, and at least 75 per cent of any additional tax liability or tax refund associated with that tax liability determination has been paid, the amount of the change will be taken into account as a “withholding tax downward spreading adjustment” as follows:
  - i) if the change in the *withholding tax downward amount* as defined in paragraph 13(i) is less than EUR 5 million, the change in *withholding tax downward amount* shall be taken into account entirely in the current Period as a *withholding tax downward spreading adjustment*;

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<sup>11</sup> Brazil, Colombia and India have expressed objections to paragraph 12, and Annex B Section 4(2)(j), to the extent that it has an impact on the MDSH calculations in Article 5(1)(b).



- ii) if the change in the *withholding tax downward amount* as defined in paragraph 13(i) is at least EUR 5 million, then:
    - A) if there has been a change in the *withholding tax downward amount* of at least EUR 5 million in a prior Period relating to the same Covered Payment with respect to which the *withholding tax downward spreading adjustment* has not been fully taken into account, the amount of the *withholding tax downward spreading adjustment* from the current change in *withholding tax downward amount* and any remaining *withholding tax downward spreading adjustment* from the prior change shall be combined and the resulting net amount shall be spread equally over the Periods beginning with the current Period and consisting of a total of the greater of:
      - 1) three Periods;
      - 2) the number of Periods to which the determination giving rise to the current changes relates; and
      - 3) the number of remaining Periods over which the *withholding tax downward spreading adjustment* from the prior change are spread; and
    - B) in all other cases the amount of the *withholding tax downward spreading adjustment* shall be spread equally across a term beginning with the current Period and consisting of a total of the greater of:
      - 1) three Periods; and
      - 2) the number of Periods to which the determination giving rise to a change in *withholding tax downward amount* relates;
  - iii) where the Group Entity that is subject to a *withholding tax downward spreading adjustment* leaves the Covered Group in a Period before a *withholding tax downward spreading adjustment* has been fully taken into account, the remaining amount shall be wholly included in that Period.
- d) with respect to each Covered Payment that occurred in a prior Period, where:
- i) the Group was not a Covered Group in the Period immediately preceding the current Period; and
  - ii) the most recent change in the *withholding tax downward amount* prior to the Period with respect to that Covered Payment resulted from a *tax liability determination* during a Period when the Group was not a Covered Group and less than two years before the beginning of the Period;

for the purpose of applying subparagraph (c), a change in the *withholding tax downward amount* will be recognised with respect to that Covered Payment equal to:

- iii) the *withholding tax downward amount* determined by the latest *tax liability determination* in the Jurisdiction that imposed the Covered Withholding Tax in respect of the Covered Payment prior to the end of the current Period, less
- iv) the *withholding tax downward amount* determined by the latest *tax liability determination* in the Jurisdiction that imposed the Covered Withholding Tax with respect to the Covered Payment during a prior Period where the Group was a Covered Group.

13. The following definitions apply for purposes of this Section:

- a) the term “covered profit allocation transaction” means a transaction between two or more Group Entities that results in taxable income or an allowable deduction in one or more Group Entities, and with respect to which the domestic law of one or more Jurisdictions in which the Group Entities or Taxable Presences are located specifies the basis for determining the allocation of items of income or expense. However, the term shall not include a transaction where taxable income or allowable deductions resulting from the transaction are recognised only by Group Entities or Taxable Presences located in the same Jurisdiction and either:
  - i) included in the same tax consolidated group for domestic corporate income tax purposes in that Jurisdiction; or
  - ii) included in the same corporate income tax group under a domestic corporate income tax regime under which the Group Entities or Taxable Presences are permitted to surrender corporate income tax losses to one another;
- b) the term “covered tax treaty” means an agreement that is either an Existing Tax Agreement or a *covered tax agreement* (as defined in Article 34(6)(b));
- c) the term “covered taxes” means:
  - i) taxes recorded in the financial accounts of a Group Entity with respect to its income or profits or its share of the income or profits of a Group Entity in which it owns a Specified Equity Interest;
  - ii) taxes on distributed profits;
  - iii) taxes imposed in lieu of a generally applicable corporate income tax; and
  - iv) taxes imposed by reference to retained earnings and corporate equity, including a tax on multiple components based on income and equity;
 

but excluding tax on income collected by the payor in respect of a payment made to another person on income arising in the Jurisdiction where the payor is located;
- d) the term “elimination eligible prior period” in a Jurisdiction means each Period:
  - i) starting with the earliest prior Period of a Covered Group in which there is an *unused elimination loss* in the Jurisdiction, and that begins on or after the later of:
    - A) three years prior to the beginning of the first Period of the Covered Group for which the provisions of the Convention are in effect under Article 49; or
    - B) ten years prior to the beginning of the current Period; and
  - ii) ending with the Period immediately preceding the current Period,

irrespective of whether the Covered Group was a Covered Group in the prior Period(s);
- e) the term “main entity”, in respect of a Taxable Presence, is the Group Entity that includes the Financial Accounting Profit (or Loss) of the Taxable Presence in its financial statements;
- f) the term “qualifying reorganisation” means a transfer of assets and liabilities such as in a merger, demerger, liquidation, or similar transaction between Group Entities of a Covered Group where:

- i) the consideration for the transfer is, in whole or in significant part, Specified Equity Interests issued by the acquiring Group Entity or by a person connected with the acquiring Group Entity, or, in the case of a liquidation, Specified Equity Interests of the target (or, when no consideration is provided, where the issuance of an equity interest would have no economic significance);
  - ii) the disposing Group Entity's gain or loss on those assets or liabilities is not subject to tax, in whole or in part; and
  - iii) the tax laws of the Jurisdiction in which the acquiring Group Entity is located require the acquiring Group Entity to compute taxable income after the disposition or acquisition using the disposing Group Entity's tax basis in the assets, adjusted for any partial taxation of the disposition or acquisition;
- g) the term "tax liability determination" means an original tax return, a self-amended tax return, an audit assessment issued by a tax administration, a determination by a court or other judicial body, a resolution under the mutual agreement procedure in a tax treaty, or any other determination by a judicial body, administrative body or competent taxing authority that determines the amount of the legal liability of the Group Entity to pay tax. It also includes any corresponding determination with respect to withholding tax liability;
- h) the term "tax losses" means, in respect of an Entity, the amount of losses of all types, incurred in a Period and available for deduction in a subsequent Period, recognised for tax purposes in the Jurisdiction of that Entity and taken into account in calculating the most recent legally enforceable *tax liability determination*;
- i) the term "withholding tax downward amount" means an amount equal to the lower of:
- i) the amount calculated by dividing the Covered Withholding Tax imposed in the latest *tax liability determination* by the higher of 15 per cent and the rate that would have been imposed in accordance with the income tax regime generally applicable in the Party in that Period on business profits of an enterprise carried on by a body corporate with the same relevant characteristics; and
  - ii) the amount of the Covered Payment after deducting an amount equal to 30 per cent of the amount of the Covered Payment;<sup>12</sup>
- j) the term "unused elimination loss" in a Jurisdiction means an Elimination Loss of a prior Period in the Jurisdiction that has not been offset by Elimination Profit of subsequent Period(s) in the Jurisdiction, before deduction of any *relevant elimination net losses* in such Period(s). In computing *unused elimination losses*, Elimination Losses are used in the chronological order of the prior Periods in which they arise to offset Elimination Profit of prior Periods.

14. For purposes of this Convention an incorporated Joint Venture that is subject to joint control by a Group Entity is considered a Group Entity and the following provisions shall apply to determine its *entity elimination profit (or loss)*:

- a) Entity Financial Accounting Profit (or Loss) shall be determined in accordance with the audited financial statements prepared for that Joint Venture under an Acceptable Financial Accounting Standard;
- b) adjustments described in paragraph 2 will be applied; and

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<sup>12</sup> India has expressed an objection to subparagraph (i)(ii).

- c) the resulting *entity elimination profit (or loss)* shall be reduced in proportion to the ownership interests in the consolidated Joint Venture that are held by Entities that are not Group Entities.

### **Section 5 – Return on Depreciation and Payroll**

1. For purposes of this Convention, the “Return on Depreciation and Payroll” of a Covered Group for a Period is the Adjusted Profit Before Tax of the Covered Group for the Period divided by the sum of the Covered Group’s *accounting depreciation* and *accounting payroll* for the Period.

2. For purposes of this Convention, the “Jurisdictional Return on Depreciation and Payroll” of a Covered Group for a Period in a Jurisdiction is the Elimination Profit (or Loss) of the Covered Group for the Period in that Jurisdiction divided by the Jurisdictional Depreciation and Payroll of the Covered Group for the Period in that Jurisdiction.

3. For purposes of this Convention, the “Jurisdictional Depreciation and Payroll” of a Covered Group for a Period in a Jurisdiction is the sum of:

- a) *entity depreciation* of each Group Entity located for the Period in that Jurisdiction;
- b) *taxable presence depreciation* of each Taxable Presence located for the Period in that Jurisdiction;
- c) *entity payroll* of each Group Entity located for the Period in that Jurisdiction; and
- d) *taxable presence payroll* of each Taxable Presence located for the Period in that Jurisdiction

4. Where a Group Entity or a Taxable Presence is subject to a *profit allocation adjustment* or *main entity taxable presence adjustment* or recognises *taxable presence elimination profit (or loss)* in the Period and that Group Entity or Taxable Presence is either located in another Jurisdiction during the Period or has ceased to operate in that Jurisdiction during the Period, an amount of *entity depreciation* and *entity payroll* or *taxable presence depreciation* and *taxable presence payroll* will be deemed for that Group Entity or Taxable Presence equal to:

- a) *entity elimination profit (or loss)* or *taxable presence elimination profit (or loss)* in the Period divided by the sum of *entity elimination profit (or loss)* or *taxable presence elimination profit (or loss)* in the four most recent Periods that the Group Entity or Taxable Presence was operating and located in the Jurisdiction, with the resulting figure then multiplied by;
- b) the sum of *entity depreciation* and *entity payroll* or *taxable presence depreciation* and *taxable presence payroll* in the four most recent Periods that the Group Entity or Taxable Presence was operating and located in the Jurisdiction.

5. The following definitions apply for purposes of this Convention:

- a) the term “accounting depreciation” means the reduction in carrying value of *eligible assets* taken into account in determining the Entity Financial Accounting Profit (or Loss) of a Group Entity, other than a *regulated financial institution* or an *extractives entity*, for a Period. This reduction in carrying value must result from depreciation, amortisation, depletion or impairment, including any such amount attributable to capitalisation of payroll expense;
- b) the term “entity depreciation” of a Group Entity not including a *regulated financial institution* or an *extractives entity*, for a Period means the *accounting depreciation* of the Group Entity in the Period after making the following adjustments:

- i) where a downward adjustment is made to the *entity elimination profit (or loss)* of a *main entity* under Section 4(2)(i) and (11), deducting an amount equal to the *taxable presence depreciation* attributed to a Taxable Presence connected to that downward adjustment multiplied by the lesser of:
  - A) one; or
  - B) the amount of the downward adjustment made to the *entity elimination profit (or loss)* of the *main entity* under Section 4(2)(i) and (11) in the Period divided by the *taxable presence elimination profit (or loss)* of the Taxable Presence in the Period;
- ii) where the *entity elimination profit (or loss)* of the Group Entity is subject to an adjustment under Section 4(2)(b)(i) with respect to certain assets, depreciation for those assets for purposes of this Section will be determined based on the carrying value taken into account for purposes of that subdivision;
- iii) where the *entity elimination profit (or loss)* of the Group Entity is subject to an adjustment under Section 4(2)(b)(vi) with respect to certain assets, depreciation for those assets will be zero for purposes of this Section;
- iv) where the *entity elimination profit (or loss)* of the Group Entity is subject to an adjustment under Section 4(2)(c) with respect to an asset acquired from another Group Entity the basis that will be applied to that asset for the purpose of determining depreciation for that asset in this Section will be determined based on the most recent *tax liability determination* with respect to that asset;
- v) where the *entity elimination profit (or loss)* of the Group Entity is subject to an adjustment under Section 4(2)(d) with respect to certain assets, any difference between *entity depreciation* expenses taken into account in determining *entity elimination profit (or loss)* in Periods considered by the *prior period adjustment* and *entity depreciation* that would have been taken into account for those assets in those Periods is added to (or subtracted from) *accounting depreciation* in the Period of the *entity elimination profit (or loss)* adjustment;
- vi) where the *entity elimination profit (or loss)* of the Group Entity is subject to an adjustment under Section 4(2)(e) with respect to certain assets, depreciation for those assets for purposes of this Section will be determined based on the carrying value taken into account for purposes of that subparagraph;
- vii) where the *entity elimination profit (or loss)* of the Group Entity is subject to an adjustment under Section 4(2)(g) with respect to certain assets, depreciation for those assets for purposes of this Section will be determined based on the carrying value taken into account for purposes of that subparagraph;
- viii) where the *entity elimination profit (or loss)* of the Group Entity is subject to an adjustment under Section 4(2)(h) with respect to certain assets, depreciation for those assets for purposes of this Section will be determined based on the carrying value taken into account for purposes of that subparagraph;
- ix) include the Group Entity's share of *accounting depreciation* incurred in a Joint Operation or an unincorporated Joint Venture that it directly owns a Specified Equity Interest in, in the same proportion as the Group Entity's share of profit or loss derived from the Joint Operation or the Joint Venture, except the *accounting depreciation* incurred in a Joint Operation or a Joint Venture that is a *regulated financial institution* or an *extractives entity*, and after applying the other adjustments in this subparagraph.

No adjustment shall be made if the Joint Venture is the Ultimate Parent Entity of another Covered Group in the Period;

- c) the term “taxable presence depreciation” of a Taxable Presence for a Period in a Jurisdiction is the sum of *taxable presence immovable property depreciation* and *taxable presence movable property depreciation* for the Period;
- d) the term “taxable presence immovable property depreciation” of a Taxable Presence for a Period in a Jurisdiction means all *entity depreciation* of a Group Entity that relates to *immovable property* located in the Jurisdiction of the Taxable Presence;
- e) the term “taxable presence movable property depreciation” of a Taxable Presence for a Period in a Jurisdiction means:
  - i) the portion of *entity depreciation* that relates to *movable property* that is attributed to the Taxable Presence in financial statements prepared with respect to a Taxable Presence that are followed for the purpose of determining the *taxable presence elimination profit (or loss)* of that Taxable Presence in the Period; or
  - ii) where such financial statements do not exist or are not followed for the purpose of determining the *taxable presence elimination profit (or loss)* of that Taxable Presence in the Period, *taxable presence movable property depreciation* shall be the *entity depreciation* of the relevant *main entity* excluding all *entity depreciation* that relates to *immovable property* and excluding the adjustment included in subparagraph (b)(i) multiplied by the *taxable presence elimination profit (or loss)* divided by the *entity elimination profit (or loss)* of the relevant *main entity* that would be determined if Section 4(2)(i) and (11) did not apply;

however the *taxable presence movable property depreciation* shall not exceed the *entity depreciation* of the relevant *main entity* excluding all *entity depreciation* that relates to *immovable property*, and shall not be less than zero.

- f) the term “eligible assets” means:
  - i) property, plant, and equipment;
  - ii) natural resources; and
  - iii) a licence or similar arrangement from the government for the use of *immovable property* or exploitation of natural resources that entails significant investment in tangible assets.

The term *eligible assets* shall not include property that is held for sale or investment;

- g) the term “immovable property” has the meaning assigned to it in Annex D Section 7(d);
- h) the term “movable property” means all property that is not *immovable property*;
- i) the term “accounting payroll” means the *eligible payroll costs* of *eligible personnel* that perform activities for the Group Entity, other than a *regulated financial institution* or an *extractives entity*, taken into account in determining the Entity Financial Accounting Profit (or Loss) of a Group Entity for a Period;
- j) the term “entity payroll” of a Group Entity not including a *regulated financial institution* or an *extractives entity* for a Period means *accounting payroll* of the Group Entity in the Period after making the following adjustments:

- i) deduct *eligible payroll costs* that are not recognised as expenses in the Entity Financial Accounting Profit (or Loss) in the Period and included in the carrying value of *eligible assets*.
  - ii) Where a downward adjustment is made to the *entity elimination profit (or loss)* of a *main entity* under Section 4(2)(i) and (11), deducting an amount equal to the *taxable presence payroll* attributed to a Taxable Presence connected to that downward adjustment multiplied by the lesser of:
    - A) one; or
    - B) the amount of the downward adjustment made to the *entity elimination profit (or loss)* of the *main entity* under Section 4(2)(i) and (11) in the Period divided by the *taxable presence elimination profit (or loss)* of the Taxable Presence in the Period.
  - iii) Where the *entity elimination profit (or loss)* of a Group Entity is subject to an adjustment under Section 4(2)(b)(iii) and (iv) with respect to stock-based compensation, recognise the adjustment taken into account in calculating the *entity elimination profit (or loss)* with respect to stock-based compensation in the Period as a corresponding adjustment to entity payroll.
  - iv) Where the *entity elimination profit (or loss)* of a Group Entity is subject to an adjustment under Section 4(2)(d) with respect to certain expenses that are included in *entity payroll*, any difference between expenses included in *entity payroll* taken into account in determining *entity elimination profit (or loss)* in Periods considered by the *prior period adjustment* and expenses included in *entity payroll* that would have been taken into account in those Periods is added to (or subtracted from) *entity payroll* in the Period of the *entity elimination profit (or loss)* adjustment.
  - v) Include the Group's Entity's share of *accounting payroll* incurred in a Joint Operation or a Joint Venture that it directly owns a Specified Equity Interest in, in the same proportion as the Group Entity's share of profit or loss derived from the Joint Operation or the Joint Venture, except the *accounting payroll* incurred in a Joint Operation or a Joint Venture that is a *regulated financial institution* or an *extractives entity*, and after applying the other adjustments in this subparagraph. No adjustment shall be made if the Joint Venture is the Ultimate Parent Entity of another Covered Group in the Period;
- k) the term "taxable presence payroll" of a Taxable Presence for a Period in a Jurisdiction means:
- i) that portion of *entity payroll* that is attributed to the Taxable Presence in financial statements prepared with respect to a Taxable Presence that are followed for the purpose of determining the *taxable presence elimination profit (or loss)* of that Taxable Presence in the Period, or
  - ii) where such financial statements do not exist or are not followed for the purpose of determining the *taxable presence elimination profit (or loss)* of that Taxable Presence in the Period, *taxable presence payroll* shall be the *entity payroll* of the relevant *main entity* excluding the adjustment included in subparagraph (j)(ii) multiplied by the *taxable presence elimination profit (or loss)* divided by the *entity elimination profit (or loss)* of the relevant *main entity* that would be determined if Section 4(11) did not apply; and
  - iii) *taxable presence payroll* shall not exceed the entity payroll of the relevant *main entity*, and shall not be less than zero;
- l) the term "eligible payroll costs" of a Group Entity for a Period means:

- i) salaries, wages, stock-based compensation, and other similar remuneration that relates to *eligible personnel* of the Group Entity;
  - ii) remuneration provided to another entity as compensation for activities performed by *eligible personnel* of the Group Entity; and
  - iii) payroll and employment taxes, and employer social security contributions with respect to services provided by *eligible personnel* of the Group Entity;
- m) the term “eligible personnel” for a Group Entity of a Covered Group means:
- i) an employee of the Group Entity, except an individual that satisfies the conditions in subdivision (ii) with respect to another Group Entity of the same Covered Group; and
  - ii) an individual that is not an employee of the Group Entity, and:
    - A) that acts under the direction and control of the Group Entity;
    - B) who predominantly participates in the ordinary operating activities of the Group Entity; and
    - C) who performs the relevant activity predominantly in the location of the Group Entity or a Taxable Presence of the Group Entity.

6. For purposes of this Section an incorporated Joint Venture that is subject to joint control by a Group Entity is considered a Group Entity and the following provisions shall apply to define its *entity depreciation* and *entity payroll*:

- a) *Accounting depreciation* and *accounting payroll* shall be determined in accordance with the audited financial statements prepared for that Joint Venture under an Acceptable Financial Accounting Standard;
- b) Adjustments described in paragraphs 5(b) and (j) will be applied; and
- c) The resulting *entity depreciation* and *entity payroll* shall be reduced in proportion to the ownership interests in the consolidated Joint Venture that are held by Entities that are not Group Entities.

### **Section 6 – Withholding Tax Upward Adjustment**

1. The Withholding Tax Upward Adjustment for a Covered Group in a Jurisdiction imposing a Covered Withholding Tax for a Period is the sum of:

- a) the *current withholding tax upward adjustment* determined under paragraph 2 with respect to each Covered Payment made in the Period; and
- b) the *withholding tax upward spreading adjustment* in the Period determined under paragraph 3 with respect to each Covered Payment made in a prior Period.

2. The “current withholding tax upward adjustment” for the Covered Group in the Jurisdiction imposing the Covered Withholding Tax for the Period is determined by multiplying:

- a) the *withholding tax upward amount* with respect to a Covered Payment made in the Period calculated with reference to the latest *tax liability determination* in respect of the Covered



Payment that was filed or issued at least 60 days before the deadline for filing the Covered Group's Amount A Tax Return and Common Documentation Package for the Period; by

- b) 100 per cent less the *withholding tax upward adjustment reduction factor* that was applicable in the Period when the Covered Payment was made.

3. If, as of the end of the current Period, the most recent *tax liability determination* in the Jurisdiction imposing the Covered Withholding Tax with respect to a Covered Payment in a prior Period in which the Group was a Covered Group, or a previously unrecognised Covered Payment in a prior Period in which the Group was a Covered Group, would result in a change in the *withholding tax upward amount* for that Covered Payment, and at least 75 per cent of any additional tax liability or tax refund associated with that *tax liability determination* has been paid, a "withholding tax upward spreading adjustment" shall be determined as follows:

- a) the amount of the "withholding tax upward spreading adjustment" is determined by multiplying:
  - i) the amount of the change in *withholding tax upward amount*; by
  - ii) 100 per cent less the *withholding tax upward adjustment reduction factor* that was applicable in the Period when the Covered Payment was made;
- b) the *withholding tax upward spreading adjustment* shall be taken into account as follows:
  - i) if the change in *withholding tax upward amount* is less than EUR 5 million, the *withholding tax upward spreading adjustment* shall be taken into account entirely in the current Period;
  - ii) if the change in *withholding tax upward amount* is at least EUR 5 million, then:
    - A) if there has been a change in the *withholding tax upward amount* of at least EUR 5 million in a prior Period relating to the same Covered Payment with respect to which the *withholding tax upward spreading adjustment* has not been fully taken into account, the amount of the *withholding tax upward spreading adjustment* from the current change and any remaining *withholding tax upward spreading adjustment* from the prior change shall be combined and the resulting net amount shall be spread equally over the Periods beginning with the current Period and consisting of a total of the greater of:
      - 1) three Periods;
      - 2) the number of Periods to which the determination giving rise to the current change relates; and
      - 3) the number of remaining Periods over which the *withholding tax upward spreading adjustment* from the prior change are spread;
    - B) in all other cases, the amount of the *withholding tax upward spreading adjustment* shall be spread equally across a term beginning with the current Period and consisting of a total of the greater of:
      - 1) three Periods; and
      - 2) the number of the Periods to which the determination giving rise to a change in the *withholding tax upward amount* relates.

4. For the purpose of applying paragraph 3 with respect to a Covered Payment that occurred in a prior Period, where:

- a) the Group was not a Covered Group in the Period immediately preceding the current Period; and
- b) the most recent change in the *withholding tax upward amount* prior to the current Period with respect to the Covered Payment resulted from a *tax liability determination* during a Period when the Group was not a Covered Group, and less than two years before the beginning of the current Period,

a change in the *withholding tax upward amount* will be recognised with respect to that Covered Payment equal to:

- c) the *withholding tax upward amount* determined by the latest *tax liability determination* in the Jurisdiction that imposed the Covered Withholding Tax in respect of the Covered Payment prior to the end of the current Period; less
- d) the *withholding tax upward amount* determined by the latest *tax liability determination* in the Jurisdiction that imposed the Covered Withholding Tax with respect to the Covered Payment during a prior Period where the Group was a Covered Group.

5. The “withholding tax upward amount” means the amount of Covered Withholding Tax imposed by the Jurisdiction divided by the rate of income tax imposed on amounts allocated to that Jurisdiction under Article 5.

6. The “withholding tax upward adjustment reduction factor” means:<sup>13</sup>

- a) 60 per cent for a *low depreciation and payroll jurisdiction* as defined in Article 5(2)(e) where:
  - i) the Jurisdictional Depreciation and Payroll of a Covered Group for a Period in the Jurisdiction is less than EUR 50 000; and
  - ii) no Group Entity of the Covered Group is located in the Jurisdiction that has Entity Financial Third-party Accounting Revenues in the Period;
- b) 30 per cent for a *low depreciation and payroll jurisdiction* as defined in Article 5(2)(e) that does not satisfy subparagraph (a); and
- c) 15 per cent in all other cases.

Notwithstanding the foregoing, if the Jurisdiction is a Lower Income Jurisdiction, subparagraph (a) shall be applied by replacing 60 per cent with 70 per cent, and subparagraph (b) shall be applied by replacing 30 per cent with 40 per cent.

7. Notwithstanding paragraph 6, the *withholding tax upward adjustment reduction factor* is:

- a) 100 per cent in the first two Periods of the Covered Group to which the Convention applies in accordance with Article 49;
- b) 75 per cent for each Period that begins after the two Periods described in subparagraph (a) and ends before the first Period for which Article 3(9) applies, where;

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<sup>13</sup> Brazil, Colombia and India have expressed objections to paragraph 6.

- i) the two conditions included in paragraph 6(a) are satisfied; or
  - ii) the Jurisdiction is a *low depreciation and payroll jurisdiction* defined in Article 5(2)(e);  
and
- c) 50 per cent in all other cases for each Period that begins after the two Periods described in subparagraph (a) and ends before the first Period for which Article 3(9) applies.

## ANNEX C – SUPPLEMENTARY PROVISIONS FOR ARTICLE 3

### **Section 1 – Provisions for Group Mergers and Demergers, Internal Fragmentation, Dual-listed Arrangements and Stapled Structures**

1. For the sole purpose of applying Article 3(2) to determine whether a Group is a Covered Group for a Period:

- a) if a *group merger* occurs in that Period or any of the five Periods immediately preceding that Period, then for any Period(s) prior to the Period in which the *group merger* occurs, the *pre-tax profit margin*, Adjusted Profit Before Tax, and Adjusted Revenues shall be those of the *acquiring group* (or the *existing group* where there is no *acquiring group*) rather than those of the Group; and
- b) if a *group demerger* occurs in that Period or any of the five Periods immediately preceding that Period, then for any Period(s) prior to the *demerger period*:
  - i) the *pre-tax profit margin and* Adjusted Profit Before Tax shall be those of the demerging group rather than those of the Group; and
  - ii) the Adjusted Revenues shall be calculated by multiplying the Adjusted Revenues of the demerging group in that Period by the ratio that the Adjusted Revenues of the demerged group in the *demerger period* bears to the total Adjusted Revenues of all demerged groups in the *demerger period*.

2. For purposes of paragraph 1:

- a) the term “acquiring group” means the Group that existed prior to a *group merger* and that includes the combining Entity that is the acquirer for purposes of an Acceptable Financial Accounting Standard;
- b) the term “demerger period” means the Period in which a *group demerger* occurs;
- c) the term “existing group” means the Group (other than an *acquiring group*) that existed prior to a *group merger* and produced Consolidated Financial Statements;
- d) the term “group demerger” means any transaction or arrangement where a single Group (the “demerging group”) is separated into two or more Groups (each a “demerged group”) the Group Entities of which are no longer included in the Consolidated Financial Statements of the same Ultimate Parent Entity;
- e) the term “group merger” means any transaction or arrangement that is a business combination for purposes of an Acceptable Financial Accounting Standard in a Period where as a result of the transaction or arrangement:
  - i) at least one Entity that met the definition of an Ultimate Parent Entity before the transaction or arrangement no longer meets that definition; and
  - ii) an Entity that did not meet the definition of an Ultimate Parent Entity before the transaction or arrangement becomes the Ultimate Parent Entity of a Group.

3. Where a Group that results from an *internal fragmentation* has Adjusted Revenues of EUR 20 billion or less in a Period, the condition in Article 3(1)(a) is deemed to be met in that Period for the Group if:

- a) the Group meets the conditions in Article 3(1)(b) and, where relevant, Article 3(2) in the Period;
- b) the sum of the Adjusted Revenues of the Group and the other Groups resulting from the same *internal fragmentation*, for the Period ending in the same calendar year is greater than EUR 20 billion; and
- c) it is reasonable to conclude, having regard to all relevant facts and circumstances, that failing to meet the condition in Article 3(1)(a) was one of the principal purposes of the *internal fragmentation*.

4. For purposes of paragraph 3, the term “internal fragmentation” means any arrangement, transaction or series of transactions applied to one or more Group Entities of a Group on or after the date of public release of the final text of this Convention, if:

- a) prior to the arrangement, transaction or series of transactions, an Excluded Entity, *investment fund*, or *real estate investment vehicle* owns a Controlling Interest in the Ultimate Parent Entity of the Group; and
- b) following the arrangement, transaction or series of transactions, the Group is separated into two or more Groups and the same Excluded Entity, *investment fund*, or *real estate investment vehicle* owns a Controlling Interest in the Ultimate Parent Entity of each such Group.

A Controlling Interest includes a Specified Equity Interest of an Entity that is held by an *investment fund* or a *real estate investment vehicle*, such that the interest holder has control under an Acceptable Financial Accounting Standard and is required to measure its investment at fair value through profit or loss in accordance with that Acceptable Financial Accounting Standard, or would have been required if the interest holder had prepared Consolidated Financial Statements.

5. Where two or more Groups are part of the same *dual-listed arrangement* or the same *stapled structure*, the Group Entities of the Groups shall be treated as Group Entities of a single Group, which will be deemed to have as a single Ultimate Parent Entity:

- a) in the case of a *stapled structure*, the Entity that prepares Consolidated Financial Statements in which the assets, liabilities, income, expenses and cash flows of all the Entities of the Groups are presented together as those of a single economic unit; or
- b) in the case of a *dual-listed arrangement*:
  - i) where only one of the Ultimate Parent Entities identified in paragraph 6(a) is a resident of a Party for the Period, the Entity identified in paragraph 6(a) that is a resident of a Party shall be the Ultimate Parent Entity of the Group;
  - ii) where none of or more than one Ultimate Parent Entities identified in paragraph 6(a) are residents of a Party for the Period, the Ultimate Parent Entity of the Group shall be:
    - A) the Entity identified in paragraph 6(a) that paid the greater amount of *covered taxes* for the fiscal year ending in the Period immediately preceding the Period; or
    - B) the Entity identified in paragraph 6(a) that is designated by the Group.

6. For purposes of paragraph 5:

- a) the term “dual-listed arrangement” means an arrangement entered into by two or more Ultimate Parent Entities of separate Groups, under which:

- i) the Ultimate Parent Entities agree to combine their business by contract alone;
  - ii) pursuant to contractual arrangements the Ultimate Parent Entities will make distributions (with respect to dividends and in liquidation) to their shareholders based on a fixed ratio;
  - iii) their activities are managed as a single economic entity under contractual arrangements while retaining their separate legal identities;
  - iv) the Specified Equity Interests of the Ultimate Parent Entities comprising the agreement are quoted, traded or transferred independently in different capital markets; and
  - v) the Ultimate Parent Entities prepare Consolidated Financial Statements that are required by a regulatory regime to be externally audited, in which the assets, liabilities, income, expenses and cash flows of all the Entities of the Groups are presented together as those of a single economic unit;
- b) the term “stapled structure” means an arrangement entered into by two or more Ultimate Parent Entities of separate Groups, under which:
- i) 50 per cent or more of the Specified Equity Interests of the Ultimate Parent Entities of the separate Groups are by reason of form of ownership, restrictions on transfer, or other terms or conditions combined with each other, and cannot be transferred or traded independently. If the combined Specified Equity Interests are listed, they are quoted at a single price; and
  - ii) one of those Ultimate Parent Entities prepares Consolidated Financial Statements that are required by a regulatory regime to be externally audited, in which the assets, liabilities, income, expenses and cash flows of all the Entities of the Groups are presented together as those of a single economic unit.

## ***Section 2 – Application of this Convention to a Group Including one or more Regulated Financial Institutions***

1. For the purpose of applying this Convention to a Group that would be a Covered Group for a Period under Article 3, but prior to the application of this paragraph, and that includes one or more *regulated financial institutions*:

- a) the term “Adjusted Profit Before Tax” shall be replaced with the term “non-RFS adjusted profit before tax”;
- b) the term “Adjusted Revenues” shall be replaced with the term “non-RFS adjusted revenues”;
- c) the term “eligible prior period” shall be replaced with the term “non-RFS eligible prior period”;
- d) the term “pre-tax profit margin” shall be replaced with the term “non-RFS pre-tax profit margin”; and
- e) the term “unused loss” shall be replaced with the term “non-RFS unused loss.”

2. The following definitions apply for purposes of this Convention in the case of a Group that includes one or more *regulated financial institutions*:

- a) the term “non-RFS adjusted profit before tax” means the *non-RFS financial accounting profit (or loss)* of the Group after applying the adjustments identified in Annex B Section 2(1)(a) through (d) and deducting *non-RFS relevant net losses*;
- b) the term “non-RFS adjusted revenues” means the Adjusted Revenues of the Group for a Period determined after excluding from the revenues reported in the Consolidated Financial Statements:
- i) in the case of a Group that elects to apply this subparagraph, total revenues reported in a *regulated financial institution segment*; and
  - ii) in all other cases, total revenues derived by Group Entities that are *regulated financial institutions* and *related investment revenue* derived by Group Entities that are not *regulated financial institutions*;
- c) the term “non-RFS eligible net losses” means the total amount of cumulative *non-RFS financial accounting losses* that exceed the total amount of cumulative *non-RFS financial accounting profits* over the *non-RFS eligible prior period(s)*, after making the adjustments described in Annex B Section 2(1)(a) through (d). In computing *non-RFS eligible net losses*, *non-RFS financial accounting losses* are used in the chronological order of the *non-RFS eligible prior periods* in which they arise to offset *non-RFS financial accounting profits* of the *non-RFSs eligible prior periods*;
- d) the term “non-RFS eligible prior period” means each Period:
- i) starting with the earliest prior Period of a Covered Group in which there is a *non-RFS unused loss*, and that begins on or after the later of:
    - A) three years prior to the beginning of the first Period of the Covered Group for which the provisions of the Convention are in effect under Article 49 (Entry into Effect); or
    - B) ten years prior to the beginning of the current Period; and
  - ii) ending with the Period immediately preceding the current Period,
- irrespective of whether the Covered Group was a Covered Group in the prior Period(s);
- e) the term “non-RFS expenses” means the total expenses of the Group deducted in calculating the Financial Accounting Profit (or Loss) of the Group for a Period less:
- i) in the case of a Group that makes the election described in subparagraph (b)(i), the total expenses incurred by a *regulated financial institution segment* of the Group; and
  - ii) in all other cases, the total expenses incurred by Group Entities that are *regulated financial institutions* and total expenses directly associated with *related investment revenue* incurred by Group Entities that are not *regulated financial institutions*;
- f) the term “non-RFS financial accounting profit (or loss)” means the profit or loss that results from adding the *non-RFS adjusted revenues* and the *non-RFS intra-group revenues* of the Group and deducting the sum of the *non-RFS expenses* and *non-RFS intra-group expenses* of the Group;
- g) the term “non-RFS intra-group expenses” of the Group for a Period means the sum of the expenses incurred by:

- i) in the case of a Group that makes the election described in subparagraph (b)(i), Group Entities that are not *segment entities* of a *regulated financial institution segment* of the Group in transactions with *segment entities* of the *regulated financial institution segment*;
  - ii) in all other cases, Group Entities that are not *regulated financial institutions* in transactions with Group Entities of the same Group that are *regulated financial institutions*;
- h) the term “non-RFS intra-group revenues” of a Group for a Period means the sum of the revenues that are derived by:
  - i) in the case of a Group that makes the election described in subparagraph (b)(i), Group Entities that are not *segment entities* of a *regulated financial institution segment* of the Group from transactions with *segment entities* of the *regulated financial institution segment*; and
  - ii) in all other cases, Group Entities that are not *regulated financial institutions* from transactions with Group Entities of the same Group that are *regulated financial institutions*;
- i) the term “non-RFS pre-tax profit margin” means the *non-RFS adjusted profit before tax* of the Group for a Period (calculated without taking into account *non-RFS relevant net losses*) divided by the sum of the *non-RFS adjusted revenues* and the *non-RFS intra-group revenues* of the Group for that Period;
- j) the term “non-RFS relevant net losses” means the sum of:
  - i) the *non-RFS eligible net losses* of the Covered Group; and
  - ii) any *transferred losses* determined under Annex B Section 2(3)(b) and (4):
    - A) substituting the term “non-RFS relevant net losses” for the term “relevant net losses”; and
    - B) substituting the term “non-RFS eligible net losses” for “eligible net losses.”
- k) the term “non-RFS unused loss” means a *non-RFS financial accounting loss* of a prior Period that has not been offset by *non-RFS financial accounting profits* of subsequent Period(s), after making the adjustments in Annex B Section 2(1)(a) through (d) in each Period in accordance with the rules set out under Annex B Section 2(1)(e) (as modified by this Annex);
- l) the term “regulated financial institution segment” means a *disclosed segment* of a Group that meets the following requirements:
  - i) one or more *segment entities* of that *disclosed segment* is a *regulated financial institution*;
  - ii) all *regulated financial institutions* of the Group are included in the one *disclosed segment*;
  - iii) at least 90 per cent of the *segment adjusted revenues* of the *disclosed segment* are:
    - A) *total licensed reported revenue* attributable to the activities that qualify one or more *segment entities* as *regulated financial institutions* other than *depository institutions*; and / or



- B) derived from one or more *segment entities* that are *depository institutions*;
  - iv) all *segment entities* in that *disclosed segment* are overseen by and subject to the authority of a relevant financial regulator; and
  - v) any *segment entity* of that *disclosed segment* that provides services to other Group Entities meets the definition of *regulated financial institution*.
3. The following definitions apply for purposes of this Convention for identifying *regulated financial institutions*:

- a) the term “regulated financial institution” means an *asset manager, credit institution, depository institution, insurance institution, investment institution, mixed financial institution, and a regulated financial institution service entity*. The term does not include a *group treasury entity* or a *group captive entity*;
- b) the term “annuity contract” means a contract under which the issuer agrees to make payments for a period of time determined in whole or part by reference to the life of one or more individuals. The term also includes a contract that is considered to be an annuity contract in accordance with the law, regulation, or practice of the Jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years;
- c) the term “asset manager” means a Group Entity:
  - i) that is licenced to carry on asset management as a business under the law or regulations of a Jurisdiction in which the Group Entity does that business or pursuant to an equivalent regime recognised by that Jurisdiction, or in the case of a Group Entity that does such business in one or more Members States of the European Economic Area, is licenced by a competent authority to carry on such business in a Member State of the European Economic Area;
  - ii) that is subject to requirements reflecting the Objectives and Principles of Securities Regulation as adopted by the International Organisation of Securities Commissions and the related implementing methodology under the law or regulations of the Jurisdiction in which that Group Entity is established; and
  - iii) for which the *total licensed reported revenue* attributable to:
    - A) investing in, managing, distributing or risk management associated with interests in an *investment fund or real estate investment vehicle, financial assets, or money* for or on behalf of other persons; and
    - B) providing investment advice or administration in support of the activities identified in clause (A) and performed by the Group Entity,

equals or exceeds 75 per cent of the Group Entity’s *total reported revenue* during the Period;
- d) the term “credit institution” means a Group Entity:
  - i) that is licenced to carry on a lending business under the laws or regulations of a Jurisdiction in which the Group Entity does that business or pursuant to an equivalent regime recognised by that Jurisdiction or, in the case of a Group Entity that does such business in one or more Members States of the European Economic Area, is licenced by a competent authority to carry on such business in a Member State of the European Economic Area;

- ii) that is subject to capital adequacy requirements incorporating a risk-based measure under the law or regulations of the Jurisdiction in which that Group Entity is established;
  - iii) that provides personal, commercial, or other loans or extensions of credit to persons that are not the Ultimate Parent Entity of the Group or Entities whose Controlling Interest is owned by the Ultimate Parent Entity (but not including providing credit for the purchase of the Covered Group's own products) or to persons that are *regulated financial institutions*; and
  - iv) for which the *total licensed reported revenue* attributable to the activities described in subdivision (iii) equals or exceeds 75 per cent of the Group Entity's *total reported revenue* during the Period;
- e) the term "deposit" means funds which are required to be repaid on demand or at the time agreed under the applicable legal and contractual conditions, with or without interest or a premium. It does not include:
- i) bonds;
  - ii) down-payments made by customers as part-payment of the purchase of a product;
  - iii) funds where the principal is not repayable at par (except for deposits made in local currency into an account of another currency where fluctuations in the par value are a result of currency fluctuations);
  - iv) payment made by way of security for the performance of a contract; or
  - v) payments made by customers in connection with money transfer services;
- f) the term "depository institution" means a Group Entity:
- i) that is licenced to carry on a banking business under the laws or regulations of a Jurisdiction in which the Group Entity does that business or pursuant to an equivalent regime recognised by that Jurisdiction or, in the case of a Group Entity that does such business in one or more Member States of the European Economic Area, is licenced by a competent authority to carry on such business in a Member State of the European Economic Area;
  - ii) that is subject to capital adequacy requirements reflecting the Core Principles for Effective Banking Supervision as provided by the Basel Committee on Banking Supervision under the law or regulations of the Jurisdiction in which that Group Entity is established;
  - iii) that accepts *deposits* in the ordinary course of a banking or similar business; and
  - iv) either of the following conditions is met at the balance sheet date for the Period:
    - A) *deposits* equal or exceed 20 per cent of the liabilities of the Group Entity; or
    - B) *deposits* equal or exceed 10 per cent of the liabilities of the Group Entity and the Group Entity can be required to post reserves with a central bank or comply with central bank reserve requirements and has access to the central bank's borrowing window or liquidity facilities;
- g) the term "financial assets" includes:

- i) a money market instrument;
  - ii) a security;
  - iii) a commodity that is a physical good where it is held as a hedging position against a commodity derivative;
  - iv) money;
  - v) an *insurance contract* or *annuity contract*; and
  - vi) any derivative instrument in an asset described above;
- however, the term does not include a non-debt, direct interest in *immovable property*;
- h) the term “financial risk” means the risk of a possible future change in one or more of:
    - i) a specified interest rate, financial instrument price, commodity price, currency exchange rate, index of prices or rates, or a credit rating or credit index; or
    - ii) any other variable, provided that variable is not specific to a party to the contract;
  - i) the term “group captive entity” means any Group Entity that carries on an insurance or reinsurance business and that derives 50 per cent or more of its *total reported revenue* from Group Entities that are not *asset managers, credit institutions, depositary institutions, insurance institutions, investment institutions, mixed financial institutions, or regulated financial institution service entities*;
  - j) the term “group treasury entity” means any Group Entity that provides treasury functions and that derives 50 per cent or more of its *total reported revenue* from Group Entities that are not *asset managers, credit institutions, depositary institutions, insurance institutions, investment institutions, mixed financial institutions, or regulated financial institution service entities*;
  - k) the term “insurance contract” means a contract under which the issuer accepts *insurance or reinsurance risk* from another party by agreeing to compensate that other party or a party designated by that other party if a specified uncertain future event adversely affects that other party;
  - l) the term “insurance institution” means a Group Entity:
    - i) that is licenced to carry on an insurance or reinsurance business under the laws or regulations of a Jurisdiction in which the Group Entity does that business or pursuant to an equivalent regime recognised by that Jurisdiction or, in the case of a Group Entity that does such business in one or more Member States of the European Economic Area, is licenced by a competent authority to carry on such business in a Member State of the European Economic Area;
    - ii) that is subject to solvency standards incorporating a risk-based capital measure under the law or regulations of the Jurisdiction in which that Group Entity is established; and
    - iii) of which the *total licensed reported revenue* arising from all *insurance contracts, annuity contracts* and *related investment revenue*, for the Period equals or exceeds 75 per cent of *total reported revenue* for such Period; or the aggregate value of the assets held to manage risk associated with *insurance contracts* and *annuity contracts* equals or exceeds 75 per cent of total assets as at the balance sheet date for the Period;

- m) the term “insurance or reinsurance risk” means a risk other than a *financial risk*, transferred from the holder of a contract to the issuer of the contract;
- n) the term “investment institution” means a Group Entity:
  - i) that is licenced to carry on a broker dealer, custodial, investment firm or investment banking business or one or more of the activities listed in subdivision (iii) under the laws or regulations of a Jurisdiction in which the Group Entity does that business or pursuant to an equivalent regime recognised by that Jurisdiction or, in the case of a Group Entity that does such business in one or more Members States of the European Economic Area, is licenced by a competent authority to carry on such business in a Member State of the European Economic Area;
  - ii) that is subject to capital adequacy requirements reflecting the Core Principles for Effective Banking Supervision as provided by the Basel Committee on Banking Supervision or Objectives and Principles of Securities Regulation as adopted by the International Organisation of Securities Commissions and the related implementing methodology under the law or regulations of the Jurisdiction in which that Group Entity is established; and
  - iii) for which the *total licensed reported revenue* attributable to one or more of the following activities equals or exceeds 75 per cent of the Group Entity’s *total reported revenue* during the Period:
    - A) dealing, broking, clearing or trading in *financial assets* for own account or for account of customers;
    - B) holding securities in inventory;
    - C) hedging transactions;
    - D) securities lending and sale and repurchase agreements in respect of *financial assets*;
    - E) participating in placing and underwriting, mergers and acquisitions, syndication, securitisation and securities issues and providing financial services related to such activities;
    - F) holding, safekeeping, transferring, controlling, administering or distributing *financial assets* for the account of other persons;
    - G) providing investment advice in support of the activities identified in clauses (A) through (F) and performed by the Group Entity;
- o) the term “mixed financial institution” means a Group Entity that is not an *asset manager, credit institution, insurance institution, or investment institution* solely because it does not have sufficient *total licensed reported revenue* to qualify as that type of institution, but for which the sum of *total licensed reported revenue* attributable to all relevant activities equals or exceeds 75 per cent of the Group Entity’s *total reported revenue* during the Period;
- p) the term “regulated financial institution service entity” means a Group Entity:
  - i) that is at least 95 per cent owned (directly or indirectly) by the Ultimate Parent Entity of the Group, and the Ultimate Parent Entity is an *asset manager, credit institution, depositary institution, insurance institution, investment institution or mixed financial institution* (other than a *group treasury entity* or a *group captive entity*) or owns at least 95 per cent (directly or indirectly) of such institution;

- ii) for which the *total reported revenue* attributable to performing administrative support services for the benefit of one or more *asset managers, credit institutions, depository institutions, insurance institutions, investment institutions* or *mixed financial institutions* (other than a *group treasury entity* or a *group captive entity*) of the same Group equals or exceeds 75 per cent of the Group Entity's *total reported revenue* during the Period; and
  - iii) those administrative support services are necessary to the carrying out of the activities of such other institutions;
- q) the term "related investment revenue" means investment revenue arising from the assets associated with the *insurance contracts* and *annuity contracts* written by a Group Entity pursuant to a licence to carry on an insurance or reinsurance business under the laws or regulations of the Jurisdiction in which the Group Entity does that business, or pursuant to a licence recognised by a Jurisdiction under an equivalent regime, or, in the case of a Group Entity that does such business in one or more Member States of the European Economic Area, is licenced by a competent authority to carry on such business in a Member State of the European Economic Area, and that is received by:
- i) that Group Entity, or
  - ii) any other Group Entity that holds assets or invest funds for the benefit of Group Entities, but only to the extent that such assets or funds, or the ownership interest in that other Group Entity, are reflected in the calculations undertaken when assessing the solvency of the Group Entity referenced in subdivision (i);
- r) the term "total licensed reported revenue" as used in subparagraphs (c), (d), (l), (n) and (o) means *total reported revenue* of a Group Entity that holds one or more licences described in subdivision (i) of the applicable subparagraphs excluding the *total reported revenue* that is attributable to a Jurisdiction where that Group Entity is not so licensed but including the *total reported revenue* that is attributable to a Jurisdiction where the licence held by the Group Entity is recognised pursuant to an equivalent regime of that Jurisdiction;
- s) the term "total reported revenue" means the revenue reported in a Group Entity's financial statements that are submitted to the relevant financial regulator. If such financial statements are not required to be reported to the relevant financial regulator, the term means the revenue as reported in the Entity's financial statements.
4. For the purpose of applying this Convention to a Covered Group that does not include one or more *regulated financial institutions* in a Period but has included one or more *regulated financial institutions* in a prior Period:
- a) the term "Adjusted Profit Before Tax" in Article 3(2)(b) shall be replaced with the term "non-RFS adjusted profit before tax" for Periods preceding the Period;
  - b) the term "Adjusted Revenues" in Article 3(2)(b) shall be replaced with the term "non-RFS adjusted revenues";
  - c) the term "pre-tax profit margin" in Article 3(2)(a) shall be replaced with the term "non-RFS pre-tax profit margin";
  - d) the term "relevant net losses" shall be replaced with the term "non-RFS relevant net losses".

### Section 3 – Application of this Convention to a Qualifying Extractives Group

1. For the purpose of applying this Convention to a *qualifying extractives group* that would be a Covered Group for a Period under Article 3 prior to the application of this paragraph:

- a) the term “Adjusted Profit Before Tax” shall be replaced with the term “non-extractives adjusted profit before tax”;
- b) the term “Adjusted Revenues” shall be replaced with the term “non-extractives adjusted revenues”;
- c) the term “eligible prior period” shall be replaced with the term “non-extractives eligible prior period”;
- d) the term “entity depreciation” shall be replaced with either the term “mixed entity depreciation” in relation to *mixed entities* or “non-extractives entity depreciation” in relation to *non-extractives entities*;
- e) the term “entity elimination profit (or loss)” shall be replaced with either the term “mixed entity elimination profit (or loss)” in relation to *mixed entities* or “non-extractives entity elimination profit (or loss)” in relation to *non-extractives entities*;
- f) the term “Entity Financial Accounting Profit (or Loss)” shall be replaced with either the term “mixed entity financial accounting profit (or loss)” in relation to *mixed entities* or “non-extractives entity financial accounting profit (or loss)” in relation to *non-extractives entities*;
- g) the term “entity payroll” shall be replaced with either the term “mixed entity payroll” in relation to *mixed entities* or “non-extractives entity payroll” in relation to *non-extractives entities*;
- h) the term “pre-tax profit margin” shall be replaced with the term “non-extractives pre-tax profit margin”;
- i) the term “taxable presence depreciation” shall be replaced with either the term “mixed entity taxable presence depreciation” or “non-extractives entity taxable presence depreciation”;
- j) the term “taxable presence elimination profit (or loss)” shall be replaced with either the term “mixed entity taxable presence elimination profit (or loss)” in relation to Taxable Presences of *mixed entities* or “non-extractives entity taxable presence elimination profit (or loss)” in relation to Taxable Presences of *non-extractives entities*;
- k) the term “taxable presence payroll” shall be replaced with either the term “mixed entity taxable presence payroll” or “non-extractives entity taxable presence payroll”;
- l) the term “unused loss” shall be replaced with the term “non-extractives unused loss.”

2. The following definitions apply for purposes of this Convention in the case of a *qualifying extractives group*:

- a) the term “allocation factor” has the meaning assigned to it in Section 4;
- b) the term “disclosed segment” has the meaning assigned to it in Section 4;
- c) the term “extractives entity” means any Group Entity for which 75 per cent or more of the *revenues* reported in its financial statements are *extractives revenues*;

- d) the term “extractives segment” means any *disclosed segment* for which 75 per cent or more of the *revenues* reported in the *disclosed segment* for a Period are *extractives revenues*;
- e) the term “mixed entity” means any Group Entity that is not an *extractives entity* or a *non-extractives entity*;
- f) the term “mixed entity depreciation” means an amount determined for a *mixed entity* as follows:
  - i) where the *mixed entity financial accounting profit (or loss)* determined under subparagraph (h)(i) is zero, the *mixed entity depreciation* equals zero;
  - ii) in all other instances, the *mixed entity depreciation* means *entity depreciation* of the *mixed entity* after excluding amounts incurred in the conduct of *extractives activities* or the derivation of *extractives revenues*;
- g) the term “mixed entity elimination profit (or loss)” means an amount determined for a *mixed entity* as follows:
  - i) where the *mixed entity financial accounting profit (or loss)* determined under subparagraph (h)(i) is zero, the *mixed entity elimination profit (or loss)* equals zero;
  - ii) in all other instances, the *mixed entity financial accounting profit (or loss)*, subject to adjustments in Annex B Section 4(2)(a) through (j) to the extent they are not related to *extractives revenues*, gains and losses relating to the disposal of an *extractives asset* reported in the financial statements of the *mixed entity* that is resident in, or its Taxable Presence located in, the Jurisdiction where the *extraction* is undertaken, and expenses directly or indirectly incurred in the conduct of *extractives activities* or the derivation of *extractives revenues*.
- h) the term “mixed entity financial accounting profit (or loss)” means an amount determined for a *mixed entity* as follows:
  - i) where the Covered Group determines *non-extractives financial accounting profit (or loss)* under subparagraph (z)(i) and all revenues of the *mixed entity* are reported in an *extractives segment*, the *mixed entity financial accounting profit (or loss)* equals zero;
  - ii) in all other instances, the Entity Financial Accounting Profit (or Loss) of the *mixed entity* after excluding *extractives revenues*, gains and losses relating to the disposal of an *extractives asset* reported in the financial statements of the *mixed entity* that is resident in, or its Taxable Presence located in, the Jurisdiction where the *extraction* is undertaken, and expenses directly or indirectly incurred in the conduct of *extractives activities* or the derivation of *extractives revenues*.
- i) the term “mixed entity payroll” means an amount determined for a *mixed entity* as follows:
  - i) where the *mixed entity financial accounting profit (or loss)* determined under subparagraph (h)(i) is zero, the *mixed entity payroll* equals zero;
  - ii) in all other instances, the *entity payroll* of the *mixed entity* after excluding amounts incurred in the conduct of *extractives activities* or the derivation of *extractives revenues*;
- j) the term “mixed entity taxable presence depreciation” means the *taxable presence depreciation* of the Taxable Presence of the *mixed entity* after excluding amounts incurred in the conduct of *extractive activities* or the derivation of *extractives revenues*;

- k) the term “mixed entity taxable presence elimination profit (or loss)” means an amount determined for a Taxable Presence of a *mixed entity* as follows:
- i) where the Covered Group determines *non-extractives financial accounting profit (or loss)* under subparagraph (z)(i) and all revenues of the *mixed entity* that is subject to the Taxable Presence are reported in an *extractives segment*, the *mixed entity taxable presence elimination profit (or loss)* equals zero;
  - ii) in all other instances, the *taxable presence elimination profit (or loss)* determined under Annex B Section 4(3) after excluding *extractives revenues*, gains and losses relating to the disposal of an *extractives asset* reported in the financial statements of the Taxable Presence located in, the Jurisdiction where the *extraction* is undertaken, and expenses directly or indirectly incurred in the conduct of *extractives activities* or the derivation of *extractives revenues*.
- l) the term “mixed entity taxable presence payroll” means the *taxable presence payroll* of the Taxable Presence of the *mixed entity* after excluding amounts incurred in the conduct of *extractives activities* or the derivation of *extractives revenues*;
- m) the term “mixed segment” means any disclosed segment that is not an *extractives segment* or a *non-extractives segment*;
- n) the term “non-extractives adjusted profit before tax” means the *non-extractives financial accounting profit (or loss)* of the Group after applying the adjustments identified in Annex B Section 2(1)(a) through (d) and deducting *non-extractives relevant net losses*;
- o) the term “non-extractives adjusted revenues” means the Adjusted Revenues of the Group for a Period, determined after excluding from the *revenues* reported in the Consolidated Financial Statements all *revenues* that are *extractives revenues*;
- p) the term “non-extractives eligible net losses” means the total amount of cumulative *non-extractives financial accounting losses* that exceed the total amount of cumulative *non-extractives financial accounting profits* over the *non-extractives eligible prior period(s)*, after making the adjustments described in Annex B Section 2(1)(a) through (d) for each *non-extractives eligible prior period*. In computing *non-extractives eligible net losses*, *non-extractives financial accounting losses* are used in the chronological order of the *non-extractives eligible prior periods* in which they arise to offset *non-extractives financial accounting profits* of the *non-extractives eligible prior periods*;
- q) the term “non-extractives eligible prior period” means each Period:
- i) starting with the earliest prior Period of a Covered Group in which there is a *non-extractives unused loss*, and that begins on or after the later of:
    - A) three years prior to the beginning of the first Period of the Covered Group for which the provisions of the Convention are in effect under Article 49; or
    - B) ten years prior to the beginning of the current Period; and
  - ii) ending with the Period immediately preceding the current Period,
- irrespective of whether the Covered Group was a Covered Group in the prior Period(s);
- r) the term “non-extractives entity” means any Group Entity for which 75 per cent or more of the *revenues* reported in its financial statements are not *extractives revenues*;



- s) the term “non-extractives entity depreciation” means an amount determined for a *non-extractives entity* as follows:
- i) where the *non-extractives entity financial accounting profit (or loss)* determined under subparagraph (u)(i) is zero, the *non-extractives entity depreciation* equals zero;
  - ii) in all other instances, the *entity depreciation* that would otherwise be determined under Annex B Section 5 multiplied by the *non-extractives entity financial accounting profit (or loss)* then divided by Entity Financial Accounting Profit (or Loss);
- t) the term “non-extractives entity elimination profit (or loss)” means an amount determined for a *non-extractives entity* as follows:
- i) where the *non-extractives entity financial accounting profit (or loss)* determined under subparagraph (u)(i) is zero, the *non-extractives entity elimination profit (or loss)* equals zero;
  - ii) in all other instances, the *non-extractives entity financial accounting profit (or loss)*, subject to adjustments in Annex B Section 4(2) based on the proportion applied in subparagraph (u)(ii);
- u) the term “non-extractives entity financial accounting profit (or loss)” means an amount determined for a *non-extractives entity* as follows:
- i) where the Covered Group determines *non-extractives financial accounting profit (or loss)* under subparagraph (z)(i) and all *revenues* of the *non-extractives entity* are reported in an *extractives segment*, the *non-extractives entity financial accounting profit (or loss)* equals zero;
  - ii) in all other instances, the Entity Financial Accounting Profit (or Loss) of the *non-extractives entity* after excluding gains and losses relating to the disposal of an *extractives asset* reported in the financial statements of the *non-extractives entity* that is resident in, or its Taxable Presence located in, the Jurisdiction where the *extraction* is undertaken and multiplying the result by the amount obtained by dividing:
    - A) the *revenues* reported in the financial statements of the *non-extractives entity* less the *extractives revenues* of the *non-extractives entity*; by
    - B) the *revenues* reported in the financial statements of the *non-extractives entity*;
- v) the term “non-extractives entity payroll” means an amount determined for a *non-extractives entity* as follows:
- i) where the *non-extractives entity financial accounting profit (or loss)* determined under subparagraph (u)(i) is zero, the *non-extractives entity payroll* equals zero;
  - ii) in all other instances, the *entity payroll* multiplied by the *non-extractives entity financial accounting profit (or loss)* then divided by Entity Financial Accounting Profit (or Loss);
- w) the term “non-extractives entity taxable presence depreciation” means the *taxable presence depreciation* of the Taxable Presence of the *non-extractives entity* multiplied by the *non-extractives entity financial accounting profit (or loss)* then divided by Entity Financial Accounting Profit (or Loss);
- x) the term “non-extractives entity taxable presence elimination profit (or loss)” means an amount determined for a Taxable Presence of a *non-extractives entity* as follows:

- i) where the Covered Group determines *non-extractives financial accounting profit (or loss)* under subparagraph (z)(i) and all *revenues* of the *non-extractives entity* that is subject to the Taxable Presence are reported in an *extractives segment*, the *non-extractives entity taxable presence elimination profit (or loss)* equals zero;
  - ii) in all other instances, the *taxable presence elimination profit (or loss)* determined under Annex B Section 4(3) multiplied by the proportion applied in subparagraph (u)(ii).
- y) the term "non-extractives entity taxable presence payroll" means the *taxable presence payroll* of the Taxable Presence of the *non-extractives entity* multiplied by the *non-extractives entity financial accounting profit (or loss)* then divided by Entity Financial Accounting Profit (or Loss);
- z) the term "non-extractives financial accounting profit (or loss)" means:
- i) in the case of a *qualifying extractives group* that reports one or more *disclosed segments* and elects to apply this subdivision (the "disclosed segment approach"), the profit or loss that results from applying the following steps in order:
    - A) If any *disclosed segment* is an *extractives segment*, starting from Financial Accounting Profit (or Loss) of the Group and:
      - 1) excluding all *revenues* and expenses reported in any *extractives segment* reported in the Consolidated Financial Statements;
      - 2) including all *revenues* and expenses reported in any *non-extractives segment* or *mixed segment* from transactions with an *extractives segment*;
      - 3) excluding any *unallocated income*, *unallocated expense* and *corporate segment income or expense* that are allocable to any *extractives segment* using the *allocation factor* applicable to the *disclosed segment*; and
      - 4) excluding gains and losses relating to the disposal of an *extractives asset* reported in the financial statements of an Entity that is resident in, or a Taxable Presence located in, the Jurisdiction where the *extraction* is undertaken;
    - B) If any *disclosed segment* is a *non-extractives segment*, starting from the results of clause (A) and:
      - 1) excluding the amount determined by multiplying:
        - (i) the *segment financial accounting profit (or loss)* of the *non-extractives segment* as calculated under Annex C Section 4 but excluding gains and losses relating to the disposal of an *extractives asset* reported in the financial statements of an Entity that is resident in, or a Taxable Presence located in, the Jurisdiction where the *extraction* is undertaken; by
        - (ii) the ratio derived by dividing the *extractives revenues* reported in the *non-extractives segment* by the total *revenues* reported in the *non-extractives segment* for the Period; and
      - 2) excluding the amount determined by multiplying:
        - (i) The *unallocated income* and *corporate segment income* that is allocable to the *non-extractives segment* using the *allocation factor* less any *unallocated expense* and *corporate segment expense* that

is allocable to the *non-extractives segment* using the *allocation factor*; by

- (ii) the ratio derived by dividing the *extractives revenues* reported in the *non-extractives segment* by the total *revenues* reported in the *non-extractives segment* for the Period; and

C) If any *disclosed segment* is a *mixed segment*, starting from the results of clause (B) and:

- 1) excluding *extractives revenues* reported in the *mixed segment* reported in the Consolidated Financial Statements;
- 2) excluding gains and losses relating to the disposal of an *extractives asset* reported in the financial statements of an Entity that is resident in, or a Taxable Presence located in, the Jurisdiction where the *extraction* is undertaken;
- 3) excluding expenses reported in the *mixed segment* reported in the Consolidated Financial Statements that are directly or indirectly incurred in the conduct of *extractives activities* or the derivation of *extractives revenues*; and
- 4) excluding the amount determined by multiplying:
  - (i) the *unallocated income* and *corporate segment income* that are indirectly allocable to the *mixed segment* using the *allocation factor* less any *unallocated expense* and *corporate segment expense* that is allocable to the *mixed segment* using the *allocation factor*; by
  - (ii) the ratio derived by dividing the *extractives revenues* reported in the *mixed segment* by the total *revenues* reported in the *mixed segment* for the Period; and

- ii) in all other cases, the profit or loss that results from adding the *mixed entity financial accounting profit (or loss)* of all *mixed entities* and the *non-extractives entity financial accounting profit (or loss)* of all *non-extractives entities*;

aa) the term “non-extractives inter-segment revenues” of a Group for a Period means the sum of revenues reported in a *mixed segment* and *non-extractives segment* that relate to transactions with an *extractives segment*, but not including *revenues* that are *extractives revenues*;

bb) the term “non-extractives pre-tax profit margin” means the *non-extractives adjusted profit before tax* of the Group for a Period (calculated without taking into account *non-extractives relevant net losses*) divided by:

- i) if applying the disclosed segment approach, the sum of the *non-extractives adjusted revenues* and the *non-extractives inter-segment revenues* of the Group for that Period; or
- ii) in all other cases, the sum of:
  - A) the *revenues* reported in the financial statements of all *mixed entities* after deducting *extractives revenues*; and

- B) the revenues reported in the financial statements of all *non-extractives entities* after deducting *extractives revenues*,
- to the extent that those *revenues* are not derived from transactions with another *mixed entity* or *non-extractives entity*;
- cc) the term “non-extractives relevant net losses” means the sum of:
- i) the *non-extractives eligible net losses* of the Covered Group; and
- ii) any *transferred losses* determined under Annex B Section 2(3)(b) and (4):
- A) substituting the term “non-extractives relevant net losses” for the term “relevant net losses”; and
- B) substituting the term “non-extractives eligible net losses” for “eligible net losses.”
- dd) the term “non-extractives segment” means any *disclosed segment* for which 75 per cent or more of the *revenues* reported in the *disclosed segment* for a Period are not *extractives revenues*;
- ee) the term “non-extractives unused loss” means a *non-extractives financial accounting loss* of a prior Period that has not been offset by *non-extractives financial accounting profit* of subsequent Period(s), after making the adjustments in Annex B Section 2(1)(a) through (d) in each Period in accordance with the rules set out under Annex B Section 2(1)(e) (as modified by this Annex);
- ff) the term “revenues” as used in this paragraph includes revenues derived from an *extractives joint venture* in the same proportion as the Group or Entity’s share of profit or loss derived from the *extractives joint venture*;
- gg) the term “unallocated expense” has the meaning assigned to it in Annex C Section 4;
- hh) the term “unallocated income” has the meaning assigned to it in Annex C Section 4.
3. The following definitions apply for purposes of this Convention:
- a) the term “qualifying extractives group” means a Group that directly (or indirectly through an *extractives joint venture* or a *resource development agreement*):
- i) is engaged in *exploration, development* or *extraction* as a principal on its own account; and
- ii) derives *extractives revenues*, which in aggregate have a substantial connection with that Group’s *exploration, development* or *extraction*;
- b) the term “development” means the process of drilling, excavating, constructing or maintaining facilities to conduct *exploration, extraction, or qualifying processing*, as well as the infrastructure supporting those facilities, decommissioning, site restoration or rehabilitation;
- c) the term “exploration” means the process of searching for and evaluating an *extractive product* resource deposit or reservoir;
- d) the term “extraction” means the removal of extractive products from their natural site or from mine tailings. It includes carbon capture utilisation and storage conducted in connection with such removal of *extractive products*;

- e) the term “extractive product” means any solid, liquid or gas that naturally occurs in, and is extracted from the earth’s crust and is in the form in which it exists upon its recovery or severance from its natural state. It includes a *mineral, mineraloid* and *hydrocarbon* and similar materials extracted from the earth’s crust;
- f) the term “extractives activity” means engaging in *exploration, development, extraction, qualifying processing, or qualifying transportation*;
- g) the term “extractives asset” means:
  - i) a license or right to explore for or exploit an *extractive product*; or
  - ii) an asset used in the conduct of an *extractives activity*;
- h) the term “extractives joint venture” means an arrangement, whether incorporated or unincorporated, in which two or more enterprises participate jointly in *exploration, development* or *extraction*;
- i) the term “extractives revenue” means revenue reported in the financial statements of an Entity that is resident in, or a Taxable Presence located in, the Jurisdiction where the extraction is undertaken, and such Entity’s share of revenue derived from an *extractives joint venture* in the same proportion as the Entity’s share of profit or loss derived from the *extractives joint venture*, from any of the following:
  - i) *extractives activity*;
  - ii) the sale of an *extractive product* or a product resulting from *qualifying processing* of a type that is produced in the course of carrying out the Group’s *extraction* and *qualifying processing*;
  - iii) gains and losses from derivative instruments used to manage risks associated with the activities described in subdivisions (i) or (ii); and
  - iv) the disposal of an *extractives asset* held in the course of carrying out the Group’s *extractives activity*.

Notwithstanding the revenues in the financial statements, for purposes of subdivision (i)(ii), where the Entity conducts *qualifying processing* and does not sell the resultant product after the *qualifying processing*, but conducts additional processing to develop a different product that is not a product resulting from *qualifying processing*, and reports revenue from that different product, the *extractives revenues* is determined as if the part of the Entity that conducts *qualifying processing* had sold the product to the part of the Entity that conducts the additional processing at the point that the *qualifying processing* was completed and before the additional processing occurred, at an arm’s length price. The arm’s length price for this purpose is the price the part of the Entity that conducts *qualifying processing* (and any prior *extractives activity*) might be expected to earn if it were dealing with the part of the enterprise that conducts the additional processing as separate and independent, or distinct and separate, enterprises under the same or similar conditions, applying the principles underlying either Article 7 (Business profits) of the OECD Model or the UN Model;

- j) the term “hydrocarbon” means any organic compound consisting predominantly of carbon and hydrogen molecules that is in solid, liquid or gaseous form occurring naturally in or on the earth or in or under water and which was formed by or subjected to a geological process and includes crude oil, oil sands, heavy oils and natural gas occurring in a subsurface oil and gas reservoir, deposit, or in a stockpile;

- k) the term “mineral” means any inorganic substance that exhibits crystalline characteristics, in solid form, occurring naturally in or on the earth’s crust or in or under water and which was formed by or subjected to a geological process, and includes clay, gems, gravel, metal, ore, rock, sand, soil, stone, salt and any such substance occurring in an ore body, ore deposit, or in a stockpile or tailings;
- l) the term “mineraloid” means any substance that does not exhibit crystalline characteristics whether in solid, liquid, or gaseous form, occurring naturally in or on the earth or in or under water and which was formed by or subjected to a geological process, and includes amber, coal, obsidian and opals, and any such substance occurring in an ore body, ore deposit, or in a stockpile or tailings;
- m) the term “qualifying processing” means processing undertaken to concentrate, isolate, purify, refine, blend, separate or liberate an *extractive product* from its natural state, and includes carbon capture utilisation and storage conducted in connection with such processing. It includes:
  - i) the processing to produce the following non-exhaustive list of products which are the end point of *qualifying processing* for purposes of the Convention: liquefied natural gas, liquefied petroleum gas and other natural gas liquids, diesel, kerosene, gasoline, hydrogen, metal oxides, metal hydroxides, anodes, cathodes, cast metals, and aluminium; and
  - ii) the processing undertaken to produce all products obtained from an *extractive product* before they become the products listed in subdivision (i) (“intermediate products”), such as bitumen produced from oil sands, metal concentrates, bauxite and alumina.

It does not include the following processing: combining two or more other products; extrusion; fabrication; manufacturing or transforming (such as the production of electricity, steel, jewellery, petrochemicals, chemicals, plastics or plastic polymers);

- n) the term “qualifying transportation” means the physical movement and storage of an *extractive product* or a product resulting from *qualifying processing*, including by air, land or sea, and includes insuring the products so transported;
- o) the term “resource development agreement” means an arrangement in which the Group is authorised by the government of the Jurisdiction where the *extractive product* is located to explore, develop and extract the *extractive product* as a contractor or concessionaire of the government.

4. Notwithstanding paragraph 3(m), for the purpose of determining the *extractives revenues* or *extractives activities* of a *qualifying extractives group*, the term “qualifying processing” will exclude processing undertaken to produce refined oil products such as diesel, kerosene, and gasoline if a notification of the intent to apply the modified definition of “qualifying processing” described in this paragraph is in effect with respect to the Jurisdictions:

- a) in which:
  - i) *processing* is undertaken by the *qualifying extractives group* to produce refined oil products such as diesel, kerosene and gasoline; and
  - ii) resulting revenues derived from *extraction* and refining of oil would otherwise meet the definition of *extractives revenue*; and
- b) whose total *extractives revenues* derived by the *qualifying extractives group* from *extraction* and refining of oil, collectively, represents the majority of *total extractives revenues* that is derived from *extraction* and refining of oil of the Group over the preceding three Periods.

5. Notifications pursuant to paragraph 4 may be made by a Party and can include one or more Jurisdictions for which it has made the declaration described in Article 42(1) with respect to all *qualifying extractives groups* at any time after the entry into force of the Convention. These notifications shall take effect for a Group with respect to the first Period ending on or after the date on which the notification is received by the Depositary.

6. A Party that has made a notification pursuant to paragraph 4 may at any time withdraw that notification by means of a notification addressed to the Depositary. Such withdrawal shall take effect for a Group with respect to Periods ending on or after the later of:

- a) the date on which the notification of withdrawal is received by the Depositary; and
- b) the date that is three years after the date of the receipt of the notification by the Depositary that is being withdrawn.

7. If a Party has withdrawn a notification pursuant to paragraph 6, it may not make another notification pursuant to paragraph 4 until three years after the later date referred to in paragraph 6.

8. For the purpose of applying this Convention to a Covered Group that was a *qualifying extractives group* in a prior Period:

- a) the term “pre-tax profit margin” in Article 3(2)(a) shall be replaced with the term “non-extractives pre-tax profit margin”;
- b) the term “Adjusted Profit Before Tax” in Article 3(2)(b) shall be replaced with the term “non-extractives adjusted profit before tax” for Periods preceding the Period;
- c) the term “Adjusted Revenues” in Article 3(2)(b) shall be replaced with the term “non-extractives adjusted revenues”; and
- d) the term “relevant net losses” shall be replaced with the term “non-extractives relevant net losses”.

#### **Section 4 – Application of this Convention to a Disclosed Segment**

1. For purposes of this Convention, a *disclosed segment* is a “covered segment” for a Period if:

- a) the Group satisfies the requirements of Article 3(1)(a) but is not treated as a Covered Group because it does not satisfy the requirements of Article 3(1)(b) or, where relevant, Article 3(2) for the Period; and
- b) the *disclosed segment* meets the requirements of Article 3(1) and, where relevant, Article 3(2) (as modified by this Section) for the Period.

2. Notwithstanding Article 3(1) and paragraph 1, a Group shall not be treated as a Covered Group for a Period, and instead a *disclosed segment* of the Group shall be treated as a *covered segment* for the Period, if:

- a) the Group meets the conditions in Article 3(1) and, where relevant, Article 3(2) for the Period, but was not a Covered Group in any prior Period; and
- b) the following requirements are met:

- i) a *disclosed segment* of the Group meets the conditions in Article 3(1) and, where relevant, Article 3(2) (as modified by this Section) for the Period;
  - ii) the *disclosed segment* was a *covered segment* in at least both of the two Periods immediately preceding the first Period in which the Group meets the conditions in Article 3(1) and, where relevant, Article 3(2);
  - iii) the Period falls within the five consecutive Periods that begin with the first Period in which the Group meets the conditions in Article 3(1) and, where relevant, Article 3(2); and
  - iv) the amount calculated under Article 2(d) of the *disclosed segment* (calculated as though the *disclosed segment* were a *covered segment*) for the Period and for each prior Period that falls within the five consecutive Periods referenced in subdivision (iii) is higher than the amount calculated under Article 2(d) of the Group in each respective Period.
3. For the purpose of applying this Convention to a *disclosed segment* for a Period:
- a) the terms “Group” and “Covered Group” shall be replaced with the terms “disclosed segment” and “covered segment”, respectively, except for purposes of:
    - i) Article 2(p), (w), (x), (y), (z), (gg), (ll);
    - ii) the first occasion the term “Group” is used in the chapeau of Article 3(2), and the tailing clause of Article 3(2);
    - iii) Article 3(6);
    - iv) Article 3(10);
    - v) Article 49;
    - vi) the second occasion the term “Covered Group” is used in Annex B Section 2(1)(a)(iii)(C);
    - vii) Annex C Section 1;
    - viii) Annex C Section 4;
    - ix) Annex E Section 1(8), (9)(b)(ii) and (9)(g)(ii);
  - b) the term “Group Entity” shall be replaced with the term “segment entity”, except for purposes of Article 2(x);
  - c) the term “Adjusted Revenues” shall be replaced with the term “segment adjusted revenues”;
  - d) the term “Financial Accounting Profit (or Loss)” shall be replaced with the term “segment financial accounting profit (or loss)”;
  - e) the term “pre-tax profit margin” shall be replaced with the term “segment pre-tax profit margin”;
  - f) the term “Adjusted Profit Before Tax” shall be replaced with the term “segment adjusted profit before tax”;
  - g) the term “relevant net losses” shall be replaced with the term “segment relevant net losses”;



- h) the term “eligible prior period” shall be replaced with the term “segment eligible prior period”; and
- i) the term “unused loss” shall be replaced with the term “segment unused loss”.

4. Where a *segment change* occurs in the Period or any of the five Periods immediately preceding the Period, Article 3(2) shall apply using the *segment restated accounts* of the *disclosed segment* but only if *segment restated accounts* are prepared for:

- a) each Period that precedes the Period in which the *segment change* occurred and that falls within the four Periods that precede the Period (or if the tailing clause in Article 3(2) applies, for each Period that precedes the Period in which the *segment change* occurred and for which a Group was in existence); and
- b) the fifth Period immediately preceding the Period if the *disclosed segment* meets the requirements of Article 3(1)(a) and (b) (as modified by this Section) in the first Period immediately preceding the Period; or
- c) the fifth and sixth Periods immediately preceding the Period if the *disclosed segment* meets the requirements of Article 3(1)(a) and (b) (as modified by this Section) in the second Period immediately preceding the Period.

5. A *disclosed segment* that is reported by a Group that includes a *regulated financial institution* and would otherwise be a *covered segment* is not a *covered segment* unless that *disclosed segment* meets the requirements of Article 3(1) and, where relevant, Article 3(2) as modified by Sections 2 and 4.

6. A *disclosed segment* that is reported by a *qualifying extractives group* and would otherwise be a *covered segment* is not a *covered segment* unless that *disclosed segment* meets the requirements of Article 3(1) and, where relevant, Article 3(2) as modified by Sections 3 and 4.

7. Where a *segment entity* of a *covered segment* is a *mixed segment entity*:

- a) for purposes of this Section:
  - i) the *entity elimination profit (or loss)* of the *mixed segment entity* for a Period shall be calculated taking into account the income and expense items included in the calculation of its Entity Financial Accounting Profit (or Loss) for the Period to the extent that those income and expenses items are taken into account in the calculation of the *segment financial accounting profit (or loss)* of the *covered segment*;
  - ii) the Elimination Profit (or Loss) of the *covered segment* for a Period will include the *taxable presence elimination profit (or loss)* of each Taxable Presence of the *mixed segment entity* to the extent that the income and expense items included in the calculation of its Entity Financial Accounting Profit (or Loss) for the Period are taken into account in the calculation of the *segment financial accounting profit (or loss)* of the *covered segment*;
- b) for purposes of this Section:
  - i) the *accounting depreciation* of the *mixed segment entity* for a Period shall include the reduction in carrying value of *eligible assets* to the extent that the reduction in carrying value of the eligible assets give rise to expenses that are included in the calculation of the *segment financial accounting profit (or loss)* of the *covered segment*;
  - ii) the *accounting payroll* of the *mixed segment entity* for a Period shall include *eligible payroll costs* of *eligible personnel* to the extent that the *eligible payroll costs* are

included in the calculation of the *segment financial accounting profit (or loss)* of the *covered segment*;

8. For the purpose of applying this Convention in the case of a Group that reports one or more *disclosed segments*:

- a) the term “segment adjusted revenues” means the revenues, exclusive of value added taxes, goods and services taxes, sales taxes, or other similar taxes on consumption, of a *disclosed segment* that are reported in the Consolidated Financial Statements of a Group for a Period modified to:
  - i) exclude revenues of the *disclosed segment* for the Period that relate to items excluded under Annex B Section 2(1)(a)(ii) and (iii), and allocate revenues related to items allocated under Annex B Section 2(1)(b)(iii) evenly among the Period in which the disposition occurs and the four subsequent Periods;
  - ii) exclude revenues for the Period derived by an Excluded Entity;
  - iii) adjust for any *prior period adjustment* of the *disclosed segment* for the Period in instances where the *prior period adjustment* of the *disclosed segment* for the Period relates to amount(s) that are classified as revenue under an Acceptable Financial Accounting Standard;
  - iv) include the *disclosed segment’s* share of revenues derived from a Joint Operation or a Joint Venture, in the same proportion as the *disclosed segment’s* share of profit or loss derived from the Joint Operation or the Joint Venture. No adjustment shall be made if the Joint Venture is the Ultimate Parent Entity of a Covered Group in the Period; and
  - v) include revenues to align with the *disclosed segment’s* proportionate share of *unallocated income* and *corporate segment income* determined under subparagraph (d)(i) but only to the extent that such income is reported as revenues in the Consolidated Financial Statements of the Ultimate Parent Entity;
- b) the term “segment pre-tax profit margin” means the *segment adjusted profit before tax* of a *disclosed segment* for a Period (calculated as though the *disclosed segment* were a *covered segment* and without taking into account *segment relevant net losses*) divided by the *segment adjusted revenues* of that *disclosed segment* for the Period;
- c) the term “segment financial accounting profit (or loss)” means the profit or loss that results from taking into account all income and expenses of a *disclosed segment* as reported in the Consolidated Financial Statements;
- d) the term “segment adjusted profit before tax” means the *segment financial accounting profit (or loss)* after:
  - i) including any *unallocated income*, *unallocated expense* and *corporate segment income or expense* that are allocable to the *covered segment* using the *allocation factor* (or, where permitted under subparagraph (e), an *alternative allocation factor*) unless the full amount of that income or expense would be reversed under subdivision (ii);
  - ii) applying the adjustments identified in Annex B Section 2(1) (as modified by this Section), to the extent those adjustments concern a *segment entity* of the *disclosed segment*; and
  - iii) deducting *segment relevant net losses* in the chronological order of the prior Period(s) to which such *segment relevant net losses* correspond and only up to the amount of

the *segment financial accounting profit* (or loss) in the Period after making the adjustments described in subdivisions (i) and (ii);

- e) an *alternative allocation factor* may be used for an item of *unallocated income*, item of *unallocated expense* or item of *corporate segment income or expense* where the conditions in subdivisions (i) through (iii) below are met:
- i) the Group elects to use an *alternative allocation factor* for relevant items of income or expenses as provided for in subparagraph (s);
  - ii) all *disclosed segments* use the *alternative allocation factor* consistently for the applicable item of *unallocated income*, item of *unallocated expense* or item of *corporate segment income or expense* for the purpose of calculating *segment adjusted profit before tax* for the Period; and
  - iii) the differential between the amount of the *segment adjusted profit before tax* of one or more of the *disclosed segments* determined by allocating the item of *unallocated income*, *item of unallocated expense* or *item of corporate segment income or expense* using an *alternative allocation factor*, and the amount of the *segment adjusted profit before tax* determined by using the *allocation factor*, is greater than 10 per cent;
- f) the term “segment relevant net losses” means the sum of:
- i) the *segment eligible net losses* of the *covered segment*; and
  - ii) any *segment transferred losses* of the *covered segment* available pursuant to an *eligible business combination* or *eligible division* involving the *covered segment*, if the conditions described in Annex B Section 2(3)(b)(i) through (iii) (modified by this Section solely by replacing references to the “Covered Group” with “Group reporting the *covered segment*”) are satisfied, and provided that, if the Group reporting the *covered segment* was a Covered Group in a prior Period, it did not make any election pursuant to Annex B Section 2(3)(b)(iii) in respect of that *eligible business combination* or *eligible division*;
- g) the term “segment eligible net losses” means the total amount of cumulative segment financial accounting losses that exceeds the total amount of *cumulative segment financial accounting profits* over the *segment eligible prior period(s)*, after making the adjustments described in subparagraph (d)(i) and (ii) for each *segment eligible prior period*. In computing *segment eligible net losses*, *segment financial accounting losses* are used in the chronological order of the *segment eligible prior periods* in which they arise to offset *segment financial accounting profits* of the *segment’s eligible prior periods*;
- h) the term “segment transferred losses” means, in respect of a *covered segment*, the amount of *transferred losses* calculated pursuant to Annex B Section 2(4) (modified by this Section solely by replacing references to the “Covered Group” with “Group reporting the *disclosed segment*”) multiplied by the proportion of:
- i) the sum of the revenues reported in the Consolidated Financial Statements of the *transferred entity* or *group* or *predecessor group*, in the Period of the *transferred entity* or *group* or *predecessor group* immediately preceding the Period in which the *eligible business combination* or *eligible division* occurred, that are derived from each Group Entity of the *transferred entity* or *group* or relevant part of the *predecessor group* that becomes a *segment entity* of the *disclosed segment* as a result of the *eligible business combination* or *eligible division*;

as compared to

- ii) the sum of the revenues reported in the Consolidated Financial Statements of the *transferred entity* or *group* or *predecessor group*, in the Period of the *transferred entity* or *group* or *predecessor group* immediately preceding the Period in which the *eligible business combination* or *eligible division* occurred, that are derived from each Group Entity of the *transferred entity* or *group* or relevant part of the *predecessor group* that becomes a Group Entity of the Group reporting the *disclosed segment* as a result of the *eligible business combination* or *eligible division*;
- i) the term “segment eligible prior period” means each Period:
  - i) starting with the earliest prior Period of the Group reporting the *covered segment* in which there is a *segment unused loss*, and that:
    - A) begins on or after the later of:
      - 1) three years prior to the beginning of the first Period of the Group reporting the *covered segment* for which the provisions of the Convention are in effect under Article 49; or
      - 2) ten years prior to the beginning of the current Period; and
    - B) either:
      - 1) ends on or after the date on which the latest *segment change* involving the *covered segment* occurred; or
      - 2) ends before the date on which the latest *segment change* involving the *covered segment* occurred, provided that:
        - (i) for that Period and each Period, if any, between that Period and that *segment change*, *segment restated accounts* of the *covered segment* have been prepared;
        - (ii) no *disclosed segment* involved in that *segment change* was a *covered segment* that deducted *segment relevant net losses* in any Period; and
  - ii) ending with the Period immediately preceding the current Period,

irrespective of whether the *covered segment* was a *covered segment* in the prior Period(s), but excluding any Period in which the Group reporting the *covered segment* was a Covered Group or which was an *eligible prior period* of that Covered Group (except to the extent that the *covered segment* was a *covered segment* in the prior Period, or that the prior Period has already been a *segment eligible prior period* of the *covered segment* in a prior Period);

- j) the term “segment unused loss” means a *segment financial accounting loss* of a prior Period that has not been offset by *segment financial accounting profit* of subsequent period(s), after making the adjustments described in subparagraphs (d)(i) and (ii) in each Period in accordance with the rules set out in subparagraph (d)(iii);
- k) the term “disclosed segment” means any segment reported in the Consolidated Financial Statements of the Ultimate Parent Entity of a Group;
- l) the term “segment change” means any change to the composition of the *disclosed segments* of a Group following which the Group is required to disclose whether it has restated the corresponding items of segment information for prior Periods under an Acceptable Financial Accounting Standard;

- m) the term “segment entity” means, with respect to a *disclosed segment*, any Group Entity whose income and expenses are, in whole or part:
  - i) reported by the *disclosed segment* in the calculation of the *segment financial accounting profit (or loss)*; or
  - ii) included in the calculation of the *segment adjusted profit before tax*;
- n) the term “mixed segment entity” means any *segment entity* whose income and expenses are:
  - i) reported by two or more *disclosed segments* in the calculation of the *segment financial accounting profit (or loss)*; or
  - ii) included in the calculation of the *segment adjusted profit before tax* of two or more *disclosed segments*;
- o) the term “segment restated accounts” means:
  - i) the financial information reported in the Consolidated Financial Statements that has been restated, following a *segment change*, to fully reflect the newly reportable *disclosed segment* in a Period prior to that *segment change*, in accordance with an Acceptable Financial Accounting Standard; or
  - ii) where the financial information referenced in subdivision (i) is not reported in the Consolidated Financial Statements, an independently audited schedule containing the financial information that would have been reported to fully reflect the newly reportable *disclosed segment* in the Periods prior to that *segment change*, in accordance with an Acceptable Financial Accounting Standard;
- p) the term “unallocated expense” means any item of expense reported in calculating the Financial Accounting Profit (or Loss) of the Group in its Consolidated Financial Statements that is not reported in calculating the *segment financial accounting profit (or loss)* of any *disclosed segment*;
- q) the term “unallocated income” means any item of income reported in calculating the Financial Accounting Profit (or Loss) of the Group in its Consolidated Financial Statements that is not reported in calculating the *segment financial accounting profit (or loss)* of any *disclosed segment*;
- r) the term “allocation factor” means the proportion of the revenues reported by the *disclosed segment* of a Group for a Period as compared to the sum of the revenues of all *disclosed segments* of the Group for the Period;
- s) the term “alternative allocation factor” means:
  - i) staff headcount in the case of an expense related to human resources, pension costs, share based compensation, deferred compensation and IT service costs;
  - ii) asset book value in the case of depreciation expense, goodwill impairments and amortisation expense;
  - iii) *segment financial accounting profit (or loss)* in the case of tax income or expense;
  - iv) net loan value in the case of interest income or expense;
  - v) net loan value in the case of corporate treasury income or expense;

- vi) underlying book value of the asset or liability in the case of foreign exchange income or expense; or
- vii) floor space in the case of rental or lease expense relating to buildings;
- t) the term “corporate segment income or expense” means any item of income or expense of a *corporate segment*;
- u) the term “corporate segment” means a *disclosed segment* provided that all, or substantially all, its reported expenses in a Period were not incurred for the purpose of generating *segment adjusted revenues* of that *disclosed segment*.

### **Section 5 – Autonomous Domestic Business Exemption**

1. For purposes of this Convention, the adjustments provided in paragraphs 3 through 5 and in paragraphs 11 and 12 shall be made for a Covered Group in a Period if for that Covered Group a Jurisdiction, in which the Covered Group operates, is a Jurisdiction that is an *autonomous domestic business jurisdiction*.

2. For purposes of this Convention:

- a) the term “autonomous domestic business jurisdiction” in respect of a Covered Group means a Jurisdiction if:
  - i) the Adjusted Revenues of the Covered Group that are treated as arising in that Jurisdiction in the Period under Article 6 are between 95 per cent and 105 per cent of the sum of the Entity Financial Third-party Accounting Revenues of Group Entities located in that Jurisdiction;
  - ii) the sum of *cross-border intra-group revenues* of Group Entities located in that Jurisdiction in the Period does not exceed 15 per cent of the sum of the total revenues included in calculating the Entity Financial Accounting Profit (or Loss) of Group Entities located in that Jurisdiction after eliminating intra-Group transactions with Group Entities located in the same Jurisdiction but before eliminating intra-Group transactions with Group Entities located in a different Jurisdiction; and
  - iii) the sum of *cross-border intra-group expenses* of Group Entities located in that Jurisdiction in the Period does not exceed 15 per cent of the sum of the total expenses deductible in calculating the Entity Financial Accounting Profit (or Loss) of Group Entities located in that Jurisdiction after eliminating intra-Group transactions with Group Entities located in the same Jurisdiction but before eliminating intra-Group transactions with Group Entities located in a different Jurisdiction;
- b) the term “cross-border intra-group revenues” means the revenues included in calculating the Entity Financial Accounting Profit (or Loss) of a Group Entity and derived from transactions with Group Entities that are not located in the same Jurisdiction;
- c) the term “cross-border intra-group expenses” means the expenses deductible in calculating the Entity Financial Accounting Profit (or Loss) of a Group Entity and incurred in respect of transactions with Group Entities that are not located in the same Jurisdiction.

3. For the purpose of applying this Convention where a Jurisdiction is an *autonomous domestic business jurisdiction* in respect of a Covered Group for a Period:

- a) the Elimination Profit (or Loss) of the Covered Group for the Period in that Jurisdiction shall be zero;
  - b) the *non-domestic autonomous adjusted revenues* of the Covered Group for the Period that are treated as arising in that Jurisdiction under Article 6 shall be zero;
  - c) the Jurisdictional Depreciation and Payroll of the Covered Group for the Period in that Jurisdiction shall be zero.
4. For purposes of Article 5, where a Jurisdiction is an *autonomous domestic business jurisdiction* in respect of a Covered Group for a Period:
- a) the Amount A Profit shall be determined by replacing, in Article 2(d), the term “Adjusted Profit Before Tax” with the term “non-domestic autonomous adjusted profit before tax” and by replacing the term “Adjusted Revenues” with the term “non-domestic autonomous adjusted revenues”;
  - b) the term “Adjusted Revenues” shall be replaced with the term “non-domestic autonomous adjusted revenues”;
  - c) the term “non-domestic autonomous adjusted profit before tax” means the *non-domestic autonomous financial accounting profit (or loss)* of the Group after applying the adjustments identified in Annex B Section 2(1)(a) through (d) and deducting *non-domestic autonomous relevant net losses*;
  - d) the term “non-domestic autonomous financial accounting profit (or loss)” means the profit or loss that results from adding the *non-domestic autonomous adjusted revenues* and the *non-domestic autonomous intra-group revenues* of the Covered Group and deducting the *non-domestic autonomous expenses* and *non-domestic autonomous intra-group expenses* of the Covered Group;
  - e) the term “non-domestic autonomous adjusted revenues” means the Adjusted Revenues of the Group for the Period determined after excluding from the revenues reported in the Consolidated Financial Statements the revenues derived by Group Entities that are located in an *autonomous domestic business jurisdiction*;
  - f) the term “non-domestic autonomous intra-group revenues” of the Covered Group for the Period means the sum of revenues that are derived by Group Entities that are not located in an *autonomous domestic business jurisdiction* from transactions with Group Entities that are located in an *autonomous domestic business jurisdiction*;
  - g) the term “non-domestic autonomous expenses” means the total expenses of the Group deducted in calculating the Financial Accounting Profit (or Loss) of the Covered Group for a Period less the total expenses incurred by Group Entities that are located in an *autonomous business jurisdiction*;
  - h) the term “non-domestic autonomous intra-group expenses” of the Covered Group for the Period means the sum of the expenses incurred by Group Entities that are not located in an *autonomous domestic business jurisdiction* in respect of transactions with Group Entities that are located in an *autonomous domestic business jurisdiction*;
  - i) the term “non-domestic autonomous relevant net losses” means the sum of:
    - i) the *non-domestic autonomous eligible net losses* of the Covered Group; and
    - ii) any *transferred losses* determined under Annex B Section 2(3)(b) and (4) :

- A) substituting the term “non-domestic autonomous relevant net losses” for the term “relevant net losses”; and
    - B) substituting the term “non-domestic autonomous eligible net losses” for “eligible net losses”;
  - j) the term “non-domestic autonomous eligible prior period” means each Period:
    - i) starting with the earliest prior Period of the Covered Group in which there is a *non-domestic autonomous unused loss* and that begins on or after the later of:
      - A) three years prior to the beginning of the first Period of the Covered Group for which the provisions of the Convention are in effect under Article 49; or
      - B) ten years prior to the beginning of the current Period; and
    - ii) ending with the Period immediately preceding the current Period,

irrespective of whether the Covered Group was a Covered Group in the prior Period(s);
  - k) the term “non-domestic autonomous unused loss” means a *non-domestic autonomous financial accounting loss* of a prior Period that has not been offset by *non-domestic autonomous financial accounting profit* of subsequent Period(s), after making the adjustments in Annex B Section 2(1)(a) through (d) in each Period in accordance with the rules set out under Annex B Section 2(1)(e) (as modified by this Annex);
  - l) the term “non-domestic autonomous eligible net losses” means the total amount of cumulative *non-domestic autonomous financial accounting losses* that exceed the total amount of cumulative *non-domestic autonomous financial accounting profits* over the *non-domestic autonomous eligible prior period(s)*, after making the adjustments described in Annex B Section 2(1)(a) through (d) for each *non-domestic autonomous eligible prior period* (as modified by this Annex). In computing *non-domestic autonomous eligible net losses*, *non-domestic autonomous financial accounting losses* are used in the chronological order of the *non-domestic autonomous eligible prior periods* in which they arise to offset *non-domestic autonomous financial accounting profits* of the *non-domestic autonomous eligible prior periods*.
5. For the purpose of determining the Elimination Threshold Return on Depreciation and Payroll:
- a) the term “*accounting depreciation*” shall be replaced with the term “*non-domestic autonomous accounting depreciation*”;
  - b) the term “*accounting payroll*” shall be replaced with the term “*non-domestic autonomous accounting payroll*”;
  - c) term “non-domestic autonomous accounting depreciation” means the reduction in carrying value of *eligible assets* taken into account in determining the *non-domestic autonomous financial accounting profit (or loss)* of a Covered Group for a Period. This reduction in carrying value must result from depreciation, amortisation, depletion or impairment, including any such amount attributable to capitalisation of payroll expense;
  - d) the term “non-domestic autonomous accounting payroll” means the *eligible payroll costs* of *eligible personnel* that perform activities for the Covered Group taken into account in determining the *non-domestic autonomous financial accounting profit (or loss)* of a Covered Group for a Period.



6. Notwithstanding Article 3(1), a Group is not a Covered Group in the Period if the *non-domestic autonomous adjusted profit before tax* of the Group for the Period is less than 10 per cent of the Adjusted Profit Before Tax of the Group for the Period.

7. Notwithstanding Article 3(1), a Group is not a Covered Group in the Period if:

- a) the Covered Group satisfies the conditions in subdivisions (i) through (iv):
  - i) at least 90 per cent of the Adjusted Revenues of the Covered Group for the Period are, under Article 6, treated as arising in one Jurisdiction and no more than 5 per cent of the Adjusted Revenues of the Covered Group are treated as arising in one Jurisdiction other than the first-mentioned Jurisdiction;
  - ii) the *group revenue delta* for the Period is less than 10 per cent of the Adjusted Revenues of the Covered Group for the Period;
  - iii) the sum of *cross-border intra-group revenues* of Group Entities for the Period does not exceed 25 per cent of the total revenues included in calculating the Financial Accounting Profit (or Loss) of the Covered Group for the Period; and
  - iv) the sum of *cross-border intra-group expenses* of Group Entities for the Period does not exceed 25 per cent of the total expenses deductible in calculating the Financial Accounting Profit (or Loss) of the Covered Group for the Period; or
- b) the Covered Group satisfies the conditions in subdivisions (i) through (iii):
  - i) the *group revenue delta* for the Period is less than 15 per cent of the Adjusted Revenues of the Covered Group for the Period;
  - ii) the sum of the Adjusted Revenues that, under Article 6, are treated as arising in Jurisdictions that do not satisfy the conditions in paragraph 2(a)(i) and (ii) does not exceed:
    - A) 5 per cent of the Adjusted Revenues of the Covered Group for the Period where the Group has Adjusted Revenues that are greater than EUR 100 billion; or
    - B) 35 per cent of the Adjusted Revenues of the Covered Group for the Period where:
      - 1) the Group has Adjusted Revenues that are less than EUR 50 billion and those Adjusted Revenues, under Article 6, are treated as arising in at least thirty Jurisdictions; and
      - 2) the result of the following calculation is less than EUR 500 million:
        - (i) subtracting 10 per cent of the Adjusted Revenues of the Group for the Period from the Adjusted Profit Before Tax of the Group; and
        - (ii) multiplying the result determined under subclause (2)(i) by 25 per cent; or
    - C) 15 per cent of the Adjusted Revenues of the Covered Group for the Period in all other cases; and

- iii) the sum of *cross-border intra-group expenses* of Group Entities for the Period do not exceed 25 per cent of the total expenses deductible in calculating the Financial Accounting Profit (or Loss) of the Covered Group for the Period.
8. For purposes of paragraph 7, the term “group revenue delta” means the amount calculated by:
  - a) deducting the sum of the Entity Financial Third-party Accounting Revenues of Group Entities located in a Jurisdiction for a Period from the Adjusted Revenues of a Covered Group for the Period that are treated as arising in that Jurisdiction as determined under Article 6; and
  - b) adding together the results of the calculation under subparagraph (a) for all Jurisdictions with respect to which the calculation under subparagraph (a) yields a result that is greater than zero.
9. For the purpose of applying this Convention to a Covered Group for which a Jurisdiction is not an *autonomous domestic business jurisdiction* in a Period but for a which the Jurisdiction was an *autonomous domestic business jurisdiction* in a prior Period, the term “relevant net losses” shall be replaced with the term “non-domestic autonomous relevant net losses”.
10. Notwithstanding the provision of paragraph 2(a), a Jurisdiction shall be an *autonomous domestic business jurisdiction* in respect of the Covered Group for a Period if the Jurisdiction was an *autonomous domestic business jurisdiction* in respect of the Covered Group under paragraph 2(a) for each of the five Periods immediately preceding the Period and it is not otherwise an *autonomous domestic business jurisdiction* in the Period under paragraph 2(a) solely as a result of not meeting the condition in paragraph 2(a)(i) for the Period, but it would have satisfied that condition if the 95 per cent and 105 per cent figures were replaced with 94 per cent and 106 per cent respectively.
11. Where a Jurisdiction is an *autonomous domestic business jurisdiction* in respect of a Covered Group for a Period and the Group is a Covered Group in the Period as the conditions in paragraphs 6 and 7 are not satisfied, the obligation of a *relieving jurisdiction* to eliminate double taxation with respect to a portion of the Amount A *relief amount* under Article 11 shall be the lower of:
  - a) the amount calculated under Article 11(6) through (15) by disapplying, for purposes of the calculation under this paragraph only, the provisions of this Section for purposes of Articles 2 through 11; and
  - b) the amount calculated under Article 11(6) through (15) applying the provisions of this Section for purposes of Articles 2 through 11.
12. The Amount A Profit of a Covered Group that is allocated to a Jurisdiction for a Period under Article 5 shall be reduced by deducting the product of multiplying:
  - a) the *non-domestic autonomous Amount A relief amount adjustment* by;
  - b) the Amount A Profit of the Covered Group for the Period that would otherwise be allocated to the Jurisdiction under Article 5 before applying this paragraph, divided by the total Amount A Profit of the Covered Group under Article 5 before applying this paragraph.
13. The term “non-domestic autonomous Amount A relief amount adjustment” means the amount calculated by:
  - a) deducting the amount calculated under paragraph 11(a) for a Jurisdiction from the amount calculated under paragraph 11(b) for the Jurisdiction; and
  - b) adding together the results of the calculations under subparagraph (a) for all Jurisdictions with respect to which the calculation under subparagraph (a) yields a result that is greater than zero.

### **Section 6 – Defence Group Adjustment**

1. For purposes of this Convention, the adjustments described in paragraph 2 shall be made for a Covered Group that is a *defence group* in a Period.
2. For purposes of this Convention, except for the purpose of determining whether a Group is a Covered Group:
  - a) the term “entity depreciation” shall be replaced with the term “non-defence entity depreciation”;
  - b) the term “entity payroll” shall be replaced with the term “non-defence entity payroll”;
  - c) the term “Adjusted Profit Before Tax” shall be replaced with the term “non-defence adjusted profit before tax”;
  - d) the term “Adjusted Revenues” shall be replaced with the term “non-defence adjusted revenues”;
  - e) the term “eligible prior period” shall be replaced with the term “non-defence eligible prior period”;
  - f) the term “entity elimination profit (or loss)” shall be replaced with the term “non-defence entity elimination profit (or loss)”;
  - g) the term “Entity Financial Accounting Profit (or Loss)” shall be replaced with either the term “non-defence entity financial accounting profit (or loss)”;
  - h) the term “taxable presence depreciation” shall be replaced with the term “non-defence taxable presence depreciation”;
  - i) the term “taxable presence elimination profit (or loss)” shall be replaced with the term “non-defence taxable presence elimination profit (or loss)”;
  - j) the term “taxable presence payroll” shall be replaced with the term “non-defence taxable presence payroll”;
  - k) the term “unused loss” shall be replaced with the term “non-defence unused loss.”
3. For purposes of paragraph 2:
  - a) the term “defence group” means a Group that derives *defence revenues*;
  - b) a supply has a “defence purpose” if:
    - i) the procuring party or user of the supply is a *specified government body* and the supply is either:
      - A) designed for use by defence or intelligence services, or
      - B) of a type that would be subject to export control regulation designed to protect security interests preserved by defence or intelligence services, or
    - ii) the disclosure of information related to the supply is prohibited by law designed to protect security interests preserved by defence or intelligence services;

- c) the term “defence revenues” means revenues that are earned in providing a supply that has a *defence purpose*;
- d) the term “defence segment” means any *disclosed segment* for which any of the revenues reported in the *disclosed segment* for a Period are *defence revenues*;
- e) the term “non-defence adjusted profit before tax” means the *non-defence financial accounting profit (or loss)* of the Group after applying the adjustments identified in Annex B Section 2(1)(a) through (d) to the extent they relate to the *non-defence adjusted revenues* and deducting *non-defence relevant net losses*;
- f) the term “non-defence adjusted revenues” means the Adjusted Revenues of the Group for a Period, determined after excluding from the revenues included in the Consolidated Financial Statements all revenues that are *defence revenues*;
- g) the term “non-defence eligible net losses” means the total amount of cumulative *non-defence financial accounting losses* that exceed the total amount of cumulative *non-defence financial accounting profits* over the *non-defence eligible prior period(s)*, after making the adjustments described in Annex B Section 2(1)(a) through (d) (as modified by this Annex) for each *non-defence eligible prior period*. In computing *non-defence eligible net losses*, *non-defence financial accounting losses* are used in the chronological order of the *non-defence eligible prior periods* in which they arise to offset *non-defence financial accounting profits* of the *non-defence eligible prior periods*;
- h) the term “non-defence eligible prior period” means each Period:
  - i) starting with the earliest prior Period of a Covered Group in which there is a *non-defence unused loss*, and that begins on or after the later of:
    - A) three years prior to the beginning of the first Period of the Covered Group for which the provisions of the Convention are in effect under Article 49; or
    - B) ten years prior to the beginning of the current Period; and
  - ii) ending with the Period immediately preceding the current Period, irrespective of whether the Covered Group was a Covered Group in the prior Period(s);
- i) term “non-defence entity depreciation” means the *entity depreciation* multiplied by *non-defence adjusted revenue* as a proportion of total revenue as calculated in subparagraph (k)(i) and (ii);
- j) the term “non-defence entity elimination profit (or loss)” means the *non-defence entity financial accounting profit (or loss)*, after making the adjustments in Annex B Section 4(2)(a) through (j) and multiplying those adjustments by *non-defence adjusted revenue* as a proportion of total revenue as calculated in subparagraph (k)(i) and (ii);
- k) the term “non-defence entity financial accounting profit (or loss)” means the Entity Financial Accounting Profit (or Loss) that would otherwise be determined under Annex B Section 4 and multiplying the result by the amount obtained by dividing:
  - i) the revenues reported in the financial statements of the Entity minus the *defence revenues* of the Entity; by
  - ii) the revenues reported in the financial statements of the Entity;
- l) the term “non-defence entity payroll” means the *entity payroll* multiplied by *non-defence adjusted revenue* as a proportion of total revenue as calculated in subparagraph (k)(i) and (ii);

- m) the term “non-defence taxable presence elimination profit (or loss)” means the *non-defence entity financial accounting profit (or loss)* that is subject to the Taxable Presence, subject to adjustments in Annex B Section 4(2)(a) through (j) based on the proportion of non-defence revenues to total revenue as calculated in subparagraph (k)(i) and (ii);
- n) the term the “non-defence financial accounting profit (or loss)” means
- i) in the case of a *defence group* that reports two or more *disclosed segments* and the Group elects to apply this subparagraph, the profit or loss that results from adjusting the Financial Accounting Profit (or Loss) of the Group by:
    - A) including any *unallocated income, unallocated expense and corporate segment income or expense* in the *segment financial accounting profit (or loss)* of each *defence segment* that are allocable to each *defence segment* using the *allocation factor* applicable to the segment; and
    - B) excluding the amount determined by multiplying the amount calculated under clause (A) of each *defence segment* by the *defence revenues* of the *defence segment* to the extent those revenues are reported in the Consolidated Financial Statements for the Period, and dividing that amount by the *segment adjusted revenues* of the *defence segment* to the extent those revenues are reported in the Consolidated Financial Statements for the Period;
  - ii) in all other cases, means the Financial Accounting Profit (or Loss) of the *defence group* multiplied by the amount obtained by dividing:
    - A) *non-defence adjusted revenues* of the *defence group* for the Period; by
    - B) Adjusted Revenues of the *defence group* for the Period;
- o) the term “non-defence relevant net losses” means the sum of:
- i) the *non-defence eligible net losses* of the Covered Group; and
  - ii) any *transferred losses* determined under Annex B Section 2(3)(b) and (4):
    - A) substituting the term “non-defence relevant net losses” for the term “relevant net losses”; and
    - B) substituting the term “non-defence eligible net losses” for “eligible net losses”;
- p) the term “non-defence taxable presence depreciation” means the *taxable presence depreciation* multiplied by the amount obtained by dividing:
- i) the revenues reported in the financial statements of the Taxable Presence minus the *defence revenues* of the Taxable Presence; by
  - ii) the revenues reported in the financial statements of the Taxable Presence;
- q) the term “non-defence taxable presence payroll” means the *taxable presence payroll* multiplied by the amount obtained by dividing:
- i) the revenues reported in the financial statements of the Taxable Presence minus the *defence revenues* of the Taxable Presence; by
  - ii) the revenues reported in the financial statements of the Taxable Presence;

- r) the term “non-defence unused loss” means a *non-defence financial accounting loss* of a prior Period that has not been offset by *non-defence financial accounting profit* of subsequent Period(s), after making the adjustments in Annex B Section 2(1)(a) through (d) in each Period in accordance with the rules set out under Annex B Section 2(1)(e) (as modified by this Annex);
  - s) the term “specified government body” means a body that is part of a government and that is legally constituted for the purpose of providing defence or intelligence services, but does not include domestic law enforcement agencies.
4. Notwithstanding Article 3(1), a Group is not a Covered Group in the Period if the *non-defence adjusted profit before tax* of the Group for the Period is less than 10 per cent of the Adjusted Profit Before Tax of the Group for the Period.
5. For the purpose of applying this Convention to a Covered Group which is not a *defence group* in a Period but was a *defence group* in a prior Period, the term “relevant net losses” shall be replaced with the term “non-defence relevant net losses”.
6. The Conference of the Parties may settle the mode of application of the provisions in this Section.

## ANNEX D – SUPPLEMENTARY PROVISIONS FOR ARTICLES 6 AND 7

### Section 1 – Finished Goods

1. The rules of this Section apply for the purpose of identifying a *reliable method* for determining the sources of Adjusted Revenues described in Article 7(1)(a).
2. In the case of sales of finished goods directly to a final customer, the enumerated indicators are:
  - a) the delivery address of the final customer; and
  - b) the location of the retail store selling to the final customer.
3. In the case of sales of finished goods through an independent distributor:
  - a) the enumerated indicators are:
    - i) the indicators in paragraph 2(a) and (b) as reported to the Covered Group by the independent distributor; and
    - ii) the location of the independent distributor, provided that the independent distributor is contractually restricted to selling in that location or that it is otherwise reasonable to conclude that the independent distributor is located in the Jurisdiction in which the finished goods are delivered to the final customer.
  - b) subject to Article 6(3)(a)(iii)(B) and (C), the source of any Adjusted Revenues derived from sales of finished goods through an independent distributor for which the source has not been determined based on *reliable indicators* shall be determined as follows:
    - i) where a Covered Group can demonstrate that for legal, regulatory or commercial reasons a portion of its Adjusted Revenues from sales of finished goods arise in an *identified region* during a Period, the source of Adjusted Revenues from that portion shall be determined using the *regional allocation key*; and
    - ii) any Adjusted Revenues derived from sales of finished goods through an independent distributor for which source has not yet been determined after the application of subdivision (i) (the “tail-end revenues”) are treated as follows:
      - A) the *lower income jurisdiction allocation key* will apply to determine the source of the tail-end revenues up to an aggregate limit of 5 per cent of the total Adjusted Revenues that the Covered Group derives from the sale of finished goods through all independent distributors for the Period, on a pro rata basis;
      - B) notwithstanding clause (A), in the event that the Covered Group demonstrates that part or all of its tail-end revenues did not arise in any Lower Income Jurisdictions during a Period, the *global allocation key* applies to determine the source of the portion of those tail-end revenues that does not exceed the 5 per cent limit in clause (A);
      - C) subject to clause (D), the source of any tail-end revenues that exceed the 5 per cent limit in clause (A) is determined using the *excess tail-end revenues allocation key*;

- D) to the extent that the Covered Group knows or has a reasonable basis to conclude that its finished goods sold through an independent distributor are primarily delivered to final customers outside the Jurisdiction of the location of the independent distributor, the *global allocation key* applies in place of the *excess tail-end revenues allocation key*.

## **Section 2 – Components**

1. The rules of this Section apply for the purpose of identifying a *reliable method* for determining the sources of Adjusted Revenues described in Article 7(1)(c).
2. The enumerated indicators are:
  - a) the delivery address of the final customer of the finished goods containing the components;
  - b) the location of the retail store selling to the final customer of the finished goods containing the components; and
  - c) the location of the independent distributor for the finished goods containing the components, 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 Jurisdiction in which the finished goods are delivered to the final customer.
3. Subject to Article 6(3)(a)(iii)(B) and (C), the source of any Adjusted Revenues described in Article 7(1)(c) for which the source has not been determined based on *reliable indicators* shall be determined using the *component allocation key*.

## **Section 3 – Services**

### *A – Location-specific services*

1. The rules of this subsection apply for the purpose of identifying a *reliable method* for determining the sources of Adjusted Revenues described in Article 7(1)(d)(i).
2. The enumerated indicators are:
  - a) in the case of a service that is connected to tangible property, the Jurisdiction in which the tangible property is located at the time of performance of the service; and
  - b) in the case of services for which the customer or its agent must be present at the location where the service is physically performed for substantially all of the time the service is performed, the Jurisdiction in which the customer or its agent is situated at the time of performance of the service.
3. For purposes of Article 7 and paragraph (2)(a), if the service involves:
  - a) the physical manipulation of tangible property that is located in international waters or international airspace when the service is performed; or
  - b) the lease of, hire of, or license to use tangible property that is or may be located in international waters or international airspace during the term of the lease, hire or license;



the tangible property shall be deemed to be located at the location of the customer when the service is performed.

### *B – Advertising services*

1. The rules of this subsection apply for the purpose of identifying a *reliable method* for determining the source of Adjusted Revenues described in Article 7(1)(d)(ii) and (iii).
2. In the case of online advertising services described in Article 7(1)(d)(ii), the enumerated indicators are:
  - a) the user profile information of the viewer;
  - b) the geolocation of the device of the viewer on which the online advertisement is displayed; and
  - c) the IP address of the device of the viewer on which the online advertisement is displayed.
3. In the case of advertising services described in Article 7(1)(d)(iii), the enumerated indicators are:
  - a) for advertisements displayed on a billboard or at another fixed site, the location of the billboard or other fixed site where the advertisement is displayed;
  - b) for advertisements displayed in newspapers, magazines, journals or other publications, the Jurisdiction in which the publication is circulated or expected to be circulated;
  - c) for advertisements displayed on television or broadcast on radio, the Jurisdiction in which the television or radio programming is received or expected to be received; and
  - d) the Jurisdiction identified in the contract or any other commercial documentation indicating where the advertisement will be displayed or received.

### *C – Online intermediation services*

1. The rules of this subsection apply for the purpose of identifying a *reliable method* for determining the sources of Adjusted Revenues described in Article 7(1)(d)(iv) and (v).
2. In the case of online intermediation services described in Article 7(1)(d)(iv):
  - a) for the purpose of identifying the Jurisdiction in which the purchaser is located, the enumerated indicators are:
    - i) the delivery address of the purchaser, in the case of a purchase of tangible goods;
    - ii) the billing address of the purchaser;
    - iii) the user profile information of the purchaser;
    - iv) the geolocation of the device of the purchaser through which the purchase is made; and
    - v) the IP address of the device of the purchaser through which the purchase is made.
  - b) for the purpose of identifying the Jurisdiction in which the seller is located, the enumerated indicators are:

- i) the billing address of the seller; and
  - ii) the user profile information of the seller.
- 3. In the case of online intermediation services described in Article 7(1)(d)(v):
  - a) for the purpose of identifying the Jurisdiction in which the purchaser is located, the enumerated indicators are:
    - i) the billing address of the purchaser;
    - ii) the user profile information of the purchaser;
    - iii) the geolocation of the device of the purchaser through which the purchase is made; and
    - iv) the IP address of the device of the purchaser through which the purchase is made.
  - b) for the purpose of identifying the Jurisdiction in which the *location-specific services* are performed, the enumerated indicators are:
    - i) in the case of a service that is connected to tangible property, the Jurisdiction in which the tangible property is expected to be located at the time of performance of the service; and
    - ii) in the case of services for which the customer or its agent must be present at the location where the service is physically performed for substantially all of the time the service is performed, the Jurisdiction in which the customer or its agent is expected to be located at the time of performance of the service.

#### *D – Transport services*

1. The rules of this subsection apply for the purpose of identifying a *reliable method* for determining the sources of Adjusted Revenues described in Article 7(1)(d)(vi) and (vii).
2. With respect to Adjusted Revenues for which no source has been determined based on *reliable indicators*:
  - a) the source of Adjusted Revenues from transport of passengers by air is determined using the *passenger air transport allocation key*;
  - b) the source of Adjusted Revenues from transport of passengers other than by air is determined using the *passenger non-air transport allocation key*;
  - c) the source of Adjusted Revenues from transport of cargo by air is determined using the *cargo air transport allocation key*; and
  - d) the source of Adjusted Revenues from transport of cargo other than by air (or transport involving both air and non-air transport services that are not separately itemised) is determined using the *cargo non-air transport allocation key*.

#### *E – Customer reward programs*

1. The rules of this subsection apply for the purpose of identifying a *reliable method* for determining the source of Adjusted Revenues described in Article 7(1)(d)(viii).

2. The enumerated indicators for determining the location of a member of a customer reward program who has redeemed or earned one or more units during a Period are:

- a) the user profile information of the member;
- b) the billing address of the member; and
- c) the Jurisdiction of the international dialling code associated with the telephone number of the member.

#### *F – Other services*

1. The rules of this subsection apply for the purpose of identifying a *reliable method* for determining the source of Adjusted Revenues described in Article 7(1)(b) and 7(1)(d)(ix).

2. In the case of services or digital content provided to a customer that is not described in paragraph 3:

- a) the enumerated indicators are:
  - i) in respect of a *specified large customer*:
    - A) information on the location of use of the service or digital content as reported to the Covered Group by the *specified large customer*;
    - B) the Jurisdiction identified in the contract or any other commercial documentation indicating where the service or digital content will be used by the *specified large customer*; and
  - ii) in respect of any other customer:
    - A) the billing address of the customer;
    - B) the user profile Information of the customer; and
    - C) the Jurisdiction of the international dialling code associated with the telephone number of the customer; and
- b) subject to Article 6(3)(a)(iii)(B) and (C), the source of any Adjusted Revenues from services or digital content described in this paragraph and provided to a *specified large customer* for which the source has not been determined based on *reliable indicators* shall be determined using the *aggregate headcount allocation key*.

3. In the case of services or digital content provided to a business customer that buys a service or digital content subject to the condition that the service or digital content is solely for onward distribution or resale to third parties (other than as an input to facilitate the provision of a different good or service to a third party):

- a) the enumerated indicators are:
  - i) information on the location of the final customer as reported to the Covered Group by the final customer;
  - ii) information as reported by the reseller of the services or digital content to the Covered Group on the location of use of the service by the final customer determined by applying the enumerated indicators in paragraph 2; and

- iii) the location of the reseller, provided that the reseller is contractually restricted to selling in that location or that it is otherwise reasonable to conclude that the reseller is located in the Jurisdiction in which the services are used by the final customer; and
- b) subject to Article 6(3)(a)(iii)(B) and (C), the source of any Adjusted Revenues from services or digital content described in this paragraph for which the source has not been determined based on *reliable indicators* shall be determined using the *service allocation key*.

#### **Section 4 – Intangible Property**

1. The rules of this Section apply for the purpose of identifying a *reliable method* for determining the sources of Adjusted Revenues described in Article 7(1)(e)(i) through (iii).
2. With respect to Adjusted Revenues described in Article 7(1)(e)(i) or (ii):
  - a) the enumerated indicators are:
    - i) in the case of *intangible property* described in Article 7(1)(e)(i):
      - A) the Jurisdiction(s) of delivery of the finished goods as reported to the Covered Group by the licensee, purchaser or other transferee (as applicable); and
      - B) the location of the retail store selling the finished goods; and
    - ii) in the case of *intangible property* described in Article 7(1)(e)(ii), the enumerated indicators that would apply with respect to the service or digital content to which the *intangible property* relates; and
  - b) subject to Article 6(3)(a)(iii)(B) and (C), the source of any Adjusted Revenues derived from licensing, sale or other alienation of *intangible property* described in Article 7(1)(e)(i) or (ii) for which the source has not been determined based on *reliable indicators* shall be determined using:
    - i) the *regional allocation key* to the extent that:
      - A) the Adjusted Revenues are derived from a *specified large intangible property customer*, or from a contract in which the *intangible property* that is the subject of the contract supports a *location-specific service*; and
      - B) the terms on which the Covered Group licensed, sold or otherwise alienated the *intangible property* restricted the licensee, purchaser or other transferee (as applicable) to exploiting the *intangible property* within an *identified region*; and
    - ii) the *global allocation key* with respect to any Adjusted Revenues remaining unallocated after the application of subdivision (i).
3. With respect to *intangible property* described in Article 7(1)(e)(iii):
  - a) in the case of Adjusted Revenues derived from a *specified large intangible property customer*:
    - i) the enumerated indicator is the Jurisdiction identified in the contract(s) with the *specified large intangible property customer* or any other commercial documentation indicating where the *intangible property* will be used by the licensee, purchaser or other transferee (as applicable); and

- ii) subject to Article 6(3)(a)(iii)(B) and (C), the source of any Adjusted Revenues derived from a *specified large intangible property customer* for *intangible property* described in Article 7(1)(e)(iii) for which the source has not been determined based on *reliable indicators* shall be determined using the *aggregate headcount allocation key*, treating the *specified large intangible property customer* as a *specified large customer*.
- b) in all other cases, the enumerated indicators are:
- i) the Jurisdiction identified in the contract or other commercial documentation indicating the location where the *intangible property* will be used by the licensee, purchaser or other transferee (as applicable);
  - ii) the location of the licensee, purchaser or other transferee (as applicable); and
  - iii) the billing address of the licensee, purchaser or other transferee (as applicable).

### **Section 5 – User Data**

1. The rules of this Section apply for the purpose of identifying a *reliable method* for determining the sources of Adjusted Revenues described in Article 7(1)(f).
2. The enumerated indicators are:
  - a) the user profile information of the user;
  - b) the geolocation of the device of the user through which the user data is transferred; and
  - c) the IP address of the device of the user through which the user data is transferred.

### **Section 6 – Immovable Property**

1. The rules of this Section apply for the purpose of identifying a *reliable method* for determining the sources of Adjusted Revenues described in Article 7(1)(g).
2. The enumerated indicators are:
  - a) the address of the *immovable property*; and
  - b) the Jurisdiction granting the right to exploit the *immovable property*.

### **Section 7 – Definitions Relevant to Articles 6 and 7 and Annex D**

For purposes of Articles 6 and 7 and Annex D:

- a) the term “final consumption expenditure” means the final consumption expenditure value for the most recent calendar year that does not end after the Period ends, expressed at current United States dollars as published by the United Nations for a Jurisdiction, or if no such value is available for any of the last five calendar years that end on or before the end of the Period, the value in current United States dollars as published by the World Bank. If no such value is

- available for a Jurisdiction for any of the last five calendar years that end on or before the end of the Period, an approximation is calculated based on that Jurisdiction's *gross national income* or Gross Domestic Product (in that order and based on availability) and the simple average of the ratio of *final consumption expenditure* to *gross national income* or Gross Domestic Product for all Jurisdictions for which *final consumption expenditure* was available.
- b) the term "gross national income" means the gross national income value for the most recent calendar year that does not end after the Period ends, expressed at current United States dollars as published by the United Nations for a Jurisdiction, or if no such value is available for any of the last five calendar years that end on or before the end of the Period, the value in current United States dollars as published by the World Bank unless that value is not available for any of the last five calendar years that end on or before the end of the Period.
  - c) the term "identified region" means a group of Jurisdictions, whether or not associated by geographical proximity, in which:
    - i) an independent distributor distributes or resells finished goods of the Covered Group when applied in the context of Section 1(3)(b)(i); or
    - ii) the terms of a contract in which the Covered Group licenses, sells, or otherwise alienates *intangible property* permit the licensee, purchaser or other transferee (as applicable) to exploit that *intangible property* when applied in the context of Section 4(2)(b)(i)(B).
  - d) the term "immovable property" includes land, buildings, improvements to land or buildings, an interest (including a lease, licence or any other right to use) in land, buildings, or improvements to land or buildings, natural resources, a right to explore for, develop or exploit natural resources, rights to variable or fixed payments as consideration for the exploitation of, or the right to explore for, develop or exploit natural resources, property accessory to *immovable property*, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, and usufruct of *immovable property*, but excludes ships and aircraft.
  - e) the term "intangible property" means property, including copyrights, trademarks, trade names, logos, designs, patents, know-how, and trade secrets, that is not in tangible form that is capable of being owned or controlled for use in commercial activities, but does not include *immovable property*, financial assets, digital content, user data or the right to use computer programs.
  - f) the term "location-specific services" mean:
    - i) any of the following types of services that are connected to tangible property:
      - A) a service substantially all of which is performed at the location of tangible property and which involves the physical manipulation of the tangible property, whether through building, demolition, maintenance or repair;
      - B) any lease of, hire of or licence to use tangible property;
      - C) the provision of utilities services, including electricity, internet and telecommunications services, to fixed premises;
      - D) architectural, engineering, design or other advisory services in relation to the development, acquisition, disposal, lease or other alienation of *immovable property*; or

- E) any service facilitating the arrival or departure of an aircraft, ship or other vessel to, from or in a Jurisdiction, including pilotage and towage and port, airport and terminal services; and
- ii) a service for which the customer or its agent must be present at the location where the service is physically performed for substantially all of the time the service is performed.
- g) the term “specified large customer” means a customer to whom the Covered Group provides other services (or digital content described in Article 7(1)(b)), and from which the Covered Group derives Adjusted Revenues in the Period (or if a Group so elects, in the immediately prior Period) that exceed:
  - i) EUR 20 million, in the case of a customer that is one of the 200 customers from which the Covered Group derives the most Adjusted Revenues in the Period from the provision of other services (or digital content described in Article 7(1)(b)); or
  - ii) EUR 100 million, in all other cases.
- h) the term “specified large intangible property customer” means a customer with which the Covered Group has one or more contracts for the licensing, sale or other alienation of *intangible property*, from which the Covered Group derives Adjusted Revenues from the licensing, sale or other alienation of *intangible property* in the Period that in aggregate exceed:
  - i) EUR 20 million, in the case of a customer that is one of the 200 customers from which the Covered Group derives the most Adjusted Revenues in the Period from the licensing, sale or other alienation of *intangible property*; or
  - ii) EUR 100 million, in all other cases.
- i) the term “transaction” means the provision, in any manner, by the Covered Group of any one of or a bundle of goods, services, digital content, *intangible property*, user data, *immovable property* or any other kind of property in respect of which it derives Adjusted Revenues and for which a separate price is issued to the customer as specified in the contract or relevant agreement. Where it is reasonable to conclude, however, having regard to all relevant facts and circumstances, that one of the principal purposes of issuing a single price for a bundle of goods, services, digital content, *intangible property*, user data, *immovable property* or other property was to artificially manipulate the categorisation of Adjusted Revenues derived from that bundle, the provision of each individual item that is part of the bundle will be treated as a separate transaction.
- j) the “aggregate headcount allocation key” treats Adjusted Revenues as arising as follows:
  - i) Adjusted Revenues are treated as arising in each Jurisdiction in proportion to the percentage share for that Jurisdiction of total aggregated employee headcount identified in the aggregated Country-by-Country Reporting statistics of the Jurisdiction of which the Ultimate Parent Entity of the *specified large customer* is a resident; or
  - ii) if the aggregated Country-by-Country Reporting statistics of the Jurisdiction of which the Ultimate Parent Entity of the *specified large customer* is a resident does not provide full disaggregation among Jurisdictions:
    - A) where the aggregated employee headcount is available for a Jurisdiction, Adjusted Revenues are treated as arising in that Jurisdiction using the method under subdivision (i) in respect of the share of aggregated employee headcount for that Jurisdiction relative to the total headcount of all Jurisdictions in the aggregated Country-by-Country Reporting statistics; and

- B) where the aggregated employee headcount is available for a group of Jurisdictions (e.g. a continent), Adjusted Revenues are treated as arising in that group of Jurisdictions in proportion to the share of aggregated employee headcount for those Jurisdictions relative to the total headcount of all Jurisdictions in the aggregated Country-by-Country Reporting statistics and those Adjusted Revenues are treated as arising in each of those Jurisdictions in proportion to the ratio of its Gross Domestic Product to the total Gross Domestic Product of that group of Jurisdictions;
- iii) if the aggregated Country-by-Country Reporting statistics of the Jurisdiction in which the Ultimate Parent Entity of the *specified large customer* is resident are not available:
  - A) 50 per cent of the Adjusted Revenues are treated as arising in the Jurisdiction of residence of the Ultimate Parent Entity of the *specified large customer*; and
  - B) 50 per cent of the Adjusted Revenues are treated as arising in Jurisdictions using the *service allocation key*, unless Adjusted Revenues are already treated as arising in that Jurisdiction under clause (A).
- k) the “cargo air transport allocation key” treats Adjusted Revenues as arising in each Jurisdiction in proportion to:
  - i) 50 per cent of the sum of the cargo weight transported by the Covered Group in a Period that was loaded onto the aircraft in that Jurisdiction and the cargo weight transported by the Covered Group in a Period that was unloaded from the aircraft in that Jurisdiction; divided by
  - ii) the sum of the cargo weight transported by the Covered Group in a Period in all Jurisdictions.
- l) the “cargo non-air transport allocation key” treats Adjusted Revenues as arising in each Jurisdiction in proportion to:
  - i) 50 per cent of the sum of the volume or weight (as the case may be) of cargo transported by the Covered Group in a Period that was loaded onto the vehicle or vessel (other than at an intermediate transit stop) in that Jurisdiction and the volume or weight (as the case may be) of cargo transported by the Covered Group in a Period that was unloaded from the vehicle or vessel (other than at an intermediate transit stop) in that Jurisdiction; divided by
  - ii) the sum of the volume or weight (as the case may be) of cargo transported by the Covered Group in a Period in all Jurisdictions.
- m) the “component allocation key” treats Adjusted Revenues as arising in Jurisdictions in proportion to their percentage share of total Gross Domestic Product.
- n) the “excess tail-end revenues allocation key” treats tail-end revenues in excess of the 5 per cent limit described in Section 1(3)(b)(ii)(A) as arising as follows:
  - i) 85 per cent are treated as arising on a pro rata basis in the Jurisdiction in which each independent distributor is located; and
  - ii) the source of the remaining 15 per cent is determined using the *global allocation key*, but excluding the Jurisdiction in which the independent distributor is located.
- o) the “global allocation key” treats Adjusted Revenues as arising in Jurisdictions in proportion to their percentage share of *final consumption expenditure*.



- p) the “lower income jurisdiction allocation key” treats tail-end revenues not exceeding the 5 per cent limit described in Section 1(3)(b)(ii)(A) as arising in each Lower Income Jurisdiction in proportion to the ratio of its *final consumption expenditure* to the *final consumption expenditure* of all Lower Income Jurisdictions.
- q) the “passenger air transport allocation key” treats Adjusted Revenues as arising in each Jurisdiction in proportion to:
  - i) the available passenger capacity of the Covered Group in a Period arriving to that Jurisdiction; divided by
  - ii) the available passenger capacity of the Covered Group in a Period arriving to any Jurisdiction.
- r) the “passenger non-air transport allocation key” treats Adjusted Revenues as arising in each Jurisdiction in proportion to:
  - i) the number of passengers transported by the Covered Group in a Period to a destination (other than an intermediate stop scheduled for less than 24 hours) in the Jurisdiction; divided by
  - ii) the number of passengers transported by the Covered Group in a Period to destinations (other than intermediate stops scheduled for less than 24 hours) in any Jurisdiction.
- s) the “regional allocation key” treats Adjusted Revenues as arising in each Jurisdiction in an *identified region* in proportion to the ratio of its *final consumption expenditure* to the *final consumption expenditure* of all Jurisdictions in the *identified region*.
- t) the “service allocation key” treats Adjusted Revenues as arising in Jurisdictions in proportion to their percentage share of total Gross Domestic Product.

## ANNEX E – SUPPLEMENTARY PROVISIONS FOR SECTION 1 OF PART V

### Section 1 – Transition Periods

1. A Party shall not amend the application of Article 6 or 7 contained within the Amount A Tax Return and Common Documentation Package submitted by a Covered Group during a *revenue sourcing transitional period* if the Covered Group has taken *reasonable measures* to ensure the correct application of those provisions to its circumstances.

2. Notwithstanding the requirement of applying a *reliable method* in Article 6, during the *initial revenue sourcing transition phase*, a Party shall permit a Covered Group to determine the sources of all or part of their Adjusted Revenues as follows:

- a) Adjusted Revenues derived from the sale of finished goods to a final customer through an independent distributor:
  - i) to the extent that any Entity in the Covered Group knows or has a reasonable basis to conclude that its finished goods sold through an independent distributor are primarily delivered to final customers outside the Jurisdiction of the location of the independent distributor:
    - A) the portion of Adjusted Revenues that can be demonstrated as arising in an *identified region* for legal, regulatory or commercial reasons shall be sourced in that *identified region* using the *regional allocation key*; and
    - B) after the application of clause (A), any remaining Adjusted Revenues shall be sourced using the *global allocation key*;
  - ii) in all other cases:
    - A) 85 per cent of Adjusted Revenues shall be sourced on a pro rata basis in the Jurisdiction of the location of the independent distributor;
    - B) 5 per cent of those Adjusted Revenues shall be sourced using the *lower income jurisdiction allocation key*, but excluding Lower Income Jurisdictions where Adjusted Revenues are sourced under clause (A); and
    - C) 10 per cent of those Adjusted Revenues shall be sourced using the *global allocation key*, but excluding Jurisdictions where Adjusted Revenues are sourced under clause (A) or (B);
- b) Adjusted Revenues derived from the sale of finished goods to a final customer through independent distributors, to the extent the Covered Group cannot apply subparagraph (a)(ii), shall be sourced using the *global allocation key*;
- c) Adjusted Revenues derived from the sale of components shall be sourced using the *component allocation key*;
- d) Adjusted Revenues derived from the provision of other services shall be sourced using the *service allocation key*; and
- e) for all other cases, Adjusted Revenues shall be sourced using the *global allocation key*.

3. A Party shall not amend the application of Annex C Section 2 contained within the Amount A Tax Return and Common Documentation Package submitted by a Covered Group during a *regulated financial services transitional period* if the Covered Group has taken *reasonable measures* to ensure the correct application of those provisions to its circumstances.

4. A Party shall not amend the application of Annex C Section 3 contained within the Amount A Tax Return and Common Documentation Package submitted by a Covered Group during an *extractives transitional period* if the Covered Group has taken *reasonable measures* to ensure the correct application of those provisions to its circumstances.

5. During the *initial extractives transition phase*, a Party shall permit a *qualifying extractives group* to demonstrate that the requirements of Article 3(1) and (2), as modified by Annex C Section 3, are not met in the Period by applying any of the following calculations:

- a) where a *disclosed segment* for which 75 per cent or more of the revenues reported in the Consolidated Financial Statements of a Group for a Period are *extractives revenues*, irrespective of whether the revenues were reported in the financial statements of an Entity that is resident in, or a Taxable Presence located in, the Jurisdiction where the *extraction* is undertaken, the *disclosed segment* may be treated as an *extractives segment*;
- b) where an Entity for which 75 per cent or more of the revenues for a Period are *extractives revenues*, irrespective of whether the revenues were reported in the financial statements of the Entity that is resident in, or its Taxable Presence located in, the Jurisdiction where the *extraction* is undertaken, the Entity may be treated as an *extractives entity*;
- c) the *pre-tax profit margin* of a *non-extractives segment* or *mixed segment* may be determined using the *segment pre-tax profit margin* as defined in Annex C Section 4(8)(b).

6. Subject to paragraph 7, a Party shall not apply interest and administrative penalties imposed under the domestic tax laws of a Party for the failure of an Entity to meet its tax payment obligations in connection with this Convention during a *revenue sourcing transitional period* if:

- a) the Designated Payment Entity and all Entities that are part of the Covered Group have taken *reasonable measures* to ensure the correct application of those provisions to its circumstances; and
- b) the relevant period is subject to a *comprehensive certainty outcome*.

7. Paragraph 6 shall not apply unless the Designated Payment Entity or *relief entity*:

- a) makes the appropriate adjustment in the first Amount A Tax Return and Common Documentation Package for the Covered Group that is filed after the date on which the *comprehensive certainty outcome* is issued, if the Entity elects to use mechanisms put in place in a Party to give effect to Article 18; or
- b) makes the appropriate adjustment before the first filing date for the domestic tax return of the Designated Payment Entity or *relief entity* following the date on which the *comprehensive certainty outcome* has been issued.

8. For purposes of Annex C Section 4(7), during the *mixed segment entity transitional period*, a Party shall permit a Group that reports a *covered segment* which includes a *mixed segment entity* for a Period to determine:

- a) the *entity elimination profit (or loss)* or *taxable presence elimination profit (or loss)* of a *mixed segment entity* for the Period as the product of multiplying:

- i) the *entity elimination profit (or loss)* or *taxable presence elimination profit (or loss)* (as appropriate); and
  - ii) the amount obtained by dividing:
    - A) the *segment financial accounting profit (or loss)* of the *covered segment* for the Period; by
    - B) the sum of the *segment financial accounting profit (or loss)* of all *disclosed segments* of the Group for the Period;
  - b) the *accounting depreciation* of the *mixed segment entity* for the Period as the product of multiplying:
    - i) the *accounting depreciation* of the *mixed segment entity*; and
    - ii) the amount obtained by dividing:
      - A) the book value of *eligible assets* of the *covered segment* for the Period; by
      - B) the book value of *eligible assets* of all *disclosed segments* of the Group for the Period;
  - c) the *accounting payroll* of the *mixed segment entity* for the Period as the product of multiplying:
    - i) the *accounting payroll* of the *mixed segment entity* for the Period; by
    - ii) the amount obtained by dividing:
      - A) the *eligible payroll costs of eligible personnel* of the *covered segment* for the Period; by
      - B) the sum of the *eligible payroll costs of eligible personnel* of all *disclosed segments* of the Group for the Period.
9. For purposes of this Section:
- a) the term “initial revenue sourcing transition phase” means the first three consecutive Periods beginning on or after the date on which this Convention enters into effect pursuant to Article 49;
  - b) the term “revenue sourcing transitional period” means:
    - i) the *initial revenue sourcing transition phase* and the three consecutive Periods that immediately follow; or
    - ii) where a Covered Group was not a Covered Group, or a Group did not have a *disclosed segment* that was a *covered segment* for any Period during the *initial revenue sourcing transition phase*, the three consecutive Periods from the beginning date of the Period in which the Group was first a Covered Group or the Group’s *disclosed segment* was first a *covered segment*;
  - c) the term “initial extractives transition phase” means the first six consecutive Periods beginning on or after the date on which this Convention enters into effect pursuant to Article 49;
  - d) the term “extractives transitional period” means:

- i) the *initial extractives transition phase* and the three consecutive Periods that immediately follow; or
  - ii) where a *qualifying extractives group* did not meet the requirements of Article 3(1) and (2), as modified by Annex C, for any Period during the *initial extractives transition phase*, the three consecutive Periods from the beginning date of the Period in which it was first a *qualifying extractives group* which met the requirements of Article 3(1) and (2), as modified by Annex C;
- e) the term “regulated financial services transitional period” means the first three consecutive Periods from the beginning date of the Period in which a Group or *disclosed segment* first met the requirements of Article 3(1) and (2), as modified by Annex C;
  - f) the term “reasonable measures” means efforts that are consistent with the guidance provided by the *scope review panel*, by the *review panel*, by the *determination panel*, or by the Conference of the Parties.
  - g) the term “mixed segment entity transitional period” means the three consecutive Periods beginning with the Period where:
    - i) a *disclosed segment* is a *covered segment* under Annex C Section 4(1); and
    - ii) no *disclosed segment* of the Group was a *covered segment* in any prior Period;

## **Section 2 – Simplified Scope Calculation**

1. A Party shall permit a Group to demonstrate that it does not meet the requirements of Article 3(1)(a), as modified by Annex C, by applying any of the following calculations:
  - a) deducting from the Adjusted Revenues of the Group the revenues included in the Consolidated Financial Statements that are reported in one or more *extractives segments* to the extent that the result of this calculation demonstrates that the Group does not meet the requirements of Article 3(1)(a), as modified by Annex C;
  - b) deducting the revenues included in the Consolidated Financial Statements that are reported in one or more *extractives entities*, to the extent that the result of this calculation demonstrates that the Group does not meet the requirements of Article 3(1)(a), as modified by Annex C;
  - c) aggregating the revenues of all *non-extractives segments* and all *mixed segments* reported in the Group’s financial statements, and the result of this calculation demonstrates that the Group does not meet the requirements of Article 3(1)(a), as modified by Annex C; or
  - d) aggregating the revenues of all Group Entities that are not *extractives entities* reported in their financial statements (in the case that the reporting period of the financial statements of an Entity that is not an *extractives entity* does not align with the Period, the revenues reported in that Entity’s financial statements should be pro-rated accordingly), and the result of this calculation demonstrates that the Group does not meet the requirements of Article 3(1)(a), as modified by Annex C.
2. A Party shall not require a Group to calculate its *non-extractives adjusted revenues* if that Group does not meet the requirements of Article 3(1)(a), as modified by Annex C, following one of the calculations in paragraph 1.

3. A Party shall permit a Group to demonstrate that it does not meet the requirements of Article 3(1)(a), as modified by Annex C, by applying any of the following calculations:

- a) deducting from the Adjusted Revenues of the Group the revenues included in the Consolidated Financial Statements that are reported in one or more *regulated financial institutions* to the extent that the result of this calculation demonstrates that the Group does not meet the requirements of Article 3(1)(a), as modified by Annex C; or
- b) aggregating the revenues of all Entities that are not *regulated financial institutions* reported in their financial statements (in the case that the reporting period of the financial statements of an Entity that is not a *regulated financial institution* does not align with the Period, the revenues reported in that Entity's financial statements should be pro-rated accordingly), and the result of this calculation demonstrates that the Group does not meet the requirements of Article 3(1)(a), as modified by Annex C.

4. A Party shall not require a Group to calculate its *non-RFS adjusted revenues* if that Group does not meet the requirements of Article 3(1)(a), as modified by Annex C, following one of the calculations in paragraph 3.

## ANNEX F – SUPPLEMENTARY PROVISIONS FOR SECTION 2 OF PART V

### Section 1 – Certainty Reviews

1. A *scope certainty review* or a *comprehensive certainty review* shall not commence before the completion of any review requested under the same paragraph for a prior Period of the Group. Notwithstanding this, the Conference of the Parties may agree processes for two or more reviews for different Periods to be undertaken simultaneously.
2. The *scope review panel*, *review panel* or *lead tax administration* may review and undertake enquiries concerning factual information contained in the documentation package filed with the request for certainty or provided by the *coordinating entity*, to verify its accuracy. Unless otherwise agreed, all engagement with the Group throughout the review shall be conducted by the *lead tax administration* through the *coordinating entity*. Where a need for additional information or clarification is identified for purposes of this review, including an explanation of the approach taken by the Group with respect to a particular aspect of its application of the Convention that was not previously provided, it shall be required from the *coordinating entity* by the *lead tax administration*. A *coordinating entity's* explanation of the Group's approach to applying an aspect of the Convention shall be prepared using a standard template agreed by the Conference of the Parties. 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 and more time is agreed with the *lead tax administration*, in which case any extension should be for the minimum period necessary in order for the required information or clarification to be provided.
3. A review may include one or more multilateral meetings or calls between the *coordinating entity* and *scope review panel*, *review panel* or *lead tax administration*, where proposed by any member of the *scope review panel*, *review panel* or *lead tax administration*. These meetings or calls provide an opportunity for the *coordinating entity* to explain the approach taken in applying the Convention in the documentation package filed with its request for certainty, respond to questions from *scope review panel* or *review panel* members or the *lead tax administration*, and provide additional information as required. To ensure transparency within the review, the *lead tax administration* shall also provide the *coordinating entity* with high level updates as to the progress of the review. The timing and format of these updates may be agreed by the *lead tax administration*, *scope review panel* or *review panel* and *coordinating entity*. These updates shall not include any information as to the position of a particular Party, including members of the *scope review panel* or *review panel*, without the agreement of that Party. Where members of the *scope review panel*, *review panel* or the *lead tax administration* do not agree as to whether an aspect of the Group's application of the Convention is correct, or the *scope review panel*, *review panel* or *lead tax administration* proposes to recommend specified changes to an approach in the documentation package filed with the request for certainty, a multilateral meeting or call shall be held with the *coordinating entity*, to give the *coordinating entity* an opportunity to provide an explanation as to the approach taken by the Group. Wherever any explanation is provided by the *coordinating entity* during a meeting or call with the *scope review panel*, *review panel* or *lead tax administration*, the explanation shall also be required in writing using the standard template within 30 days after the meeting or call, unless the *coordinating entity* provides a reasonable explanation as to why more time is needed and more time is agreed with the *lead tax administration*, in which case any extension should be for the minimum period necessary in order for the required explanation to be provided. Each member of a *scope review panel* or *review panel* and the *lead tax administration* may take this explanation into account in reaching its own conclusion as to whether a change should be recommended.
4. At any point before a review by the *scope review panel*, *review panel* or *lead tax administration* is completed, the Competent Authority of any *listed party* or *affected party* not participating on the *scope review panel* or *review panel* may submit to the Competent Authority of the Party 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 documentation package filed by the *coordinating entity* with the request for certainty and, if possible, propose resolutions to address these concerns. The Competent Authority of the Party of the

*lead tax administration* shall exchange these concerns and proposed resolutions with the Competent Authorities of all *listed parties* or *affected parties*. The *scope review panel*, *review panel* or *lead tax administration* shall take these concerns and proposed resolutions into account in conducting the review and shall endeavour to resolve them as appropriate. Where appropriate, the *lead tax administration* should request any relevant explanation from the *coordinating entity* under the process in paragraph 2, if this was not already provided. A *coordinating entity's* explanation of the approach taken to applying an aspect of the Convention shall be prepared using the standard template. To facilitate this process within the applicable timeframe, Competent Authorities of *listed parties* and *affected parties* should aim to provide details of these concerns as early as possible, even before the *scope review panel*, *review panel* or *lead tax administration* commences its review.

5. A *scope review panel* or *review panel* shall endeavour to reach agreement including all members as to whether each aspect of the documentation package filed with a request for certainty reflects a correct application of the Convention or if amendments to the approach taken in the documentation package should be required. Where it becomes clear to the *scope review panel* or *review panel* that, despite its endeavours, the panel is unlikely to reach such agreement on a particular aspect of a documentation package, discussions on that aspect should cease without agreement having been reached. The *scope review panel* or *review panel* shall endeavour to reach agreement including all members on other aspects of the documentation package, even if the consequence of this lack of agreement on one particular aspect is that the *scope review panel* or *review panel* is unable to agree numeric elements.

6. Where at any point during a *comprehensive certainty review* a *review panel* or the *lead tax administration* identifies a Party that is an *affected party* that was not included in the Group's Amount A Tax Return and Common Documentation Package and was not identified under the process in Article 23(4), the Competent Authority of the Party of the *lead tax administration* shall within 30 days notify the Competent Authority of that Party that this is the case, and exchange the Amount A Tax Return and Common Documentation Package and any other information that has already been exchanged with the Competent Authorities of other *affected parties*.

7. Where under paragraph 6, the Competent Authority of the Party of the *lead tax administration* notifies the Competent Authority of a Party that the Party is an *affected party* of a Covered Group for a Period, and a request for *advance certainty* was submitted at the same time as the request for *comprehensive certainty* for that Period, the Competent Authority of the Party of the *lead tax administration* shall exchange with the Competent Authority of that Party a copy of the request for *advance certainty*, the *advance certainty documentation package* and any other information that has already been exchanged with the Competent Authorities of other *affected parties*.

8. A *scope certainty review* or a *comprehensive certainty review* shall not require changes to information contained in the financial statements of a Group if this information has been subject to independent audit. Where such information is subject to one or more adjustments in accordance with the Convention, whether these adjustments have been made and are correct shall be subject to review, together with how the information is otherwise used for purposes of the Convention.

9. A *scope certainty review* or a *comprehensive certainty review* shall not consider whether any particular transaction has been undertaken at arm's length or what the correct arm's length price would be. Where it is determined under the domestic law of a Party, or in accordance with a process contained in an international agreement of a Party, that an adjustment to the price or other terms of a transaction is necessary for consistency with the arm's length principle, a *scope review panel*, *review panel* or *lead tax administration* shall confirm that these adjustments have been correctly reflected to the extent and in the manner required under this Convention. Where a transaction is deemed by provisions of this Convention to occur within a Group Entity at arm's length, including under Annex C Section 3(3)(i), nothing in this paragraph shall prevent a *scope review panel*, *review panel* or *lead tax administration* considering whether the pricing of that deemed transaction is at arm's length for purposes of the Convention only.

10. In considering the application of Annex C Section 6 to a Group, a *scope review panel*, *review panel* or *lead tax administration* shall not require the *coordinating entity* to provide, and shall not consider, details of individual transactions for the purpose of determining whether the Group is a *defence group* or whether



any particular revenues are *defence revenues*. Without prejudice to any other limitations on certainty reviews provided for in this Convention, the review undertaken by a *scope review panel*, *review panel* or *lead tax administration* with respect to (i) the determination of whether the Group is a *defence group*, (ii) whether any particular revenues are *defence revenues*, or (iii) any revenues related to the sales of supplies (including *components* of such supplies) described under Annex C Section 6(3)(b)(i)(B) or (b)(ii) shall, in each case, be limited to general inquiries, including, but not limited to basic methodologies used by the Group to identify such revenues, generalised reconciliations with public financial statements, and identification of applicable national law designed to protect defence or intelligence services.

11. The *scope review panel*, *review panel* or *lead tax administration* shall wherever appropriate take into account any *certainty outcomes* agreed with respect to the Group for earlier Periods. The *lead tax administration* should, to the extent possible and in accordance with Article 37, make available to a *scope review panel* or *review panel* any relevant information pertaining to a review for an earlier Period of the Group. Where the *scope review panel*, *review panel* or *lead tax administration* proposes a recommendation that is inconsistent with an earlier agreed *certainty outcome* for the same Group, an explanation as to the reason why this is necessary for a correct application of the Convention shall be included in the summary of outcomes of the review.

12. Where an *advance certainty outcome* applies for the Period, the *scope review panel*, *review panel* or *lead tax administration* undertaking a *scope certainty review* or a *comprehensive certainty review* shall review any confirmation and supporting evidence provided by the *coordinating entity* with its request for certainty to confirm that an agreed approach has been implemented by the Group and has been correctly applied, and that *critical assumptions* agreed as part of that *advance certainty outcome* continue to be met. The *scope review panel*, *review panel* or *lead tax administration* shall not otherwise consider issues covered by the *advance certainty outcome* unless the *coordinating entity* or any *listed party* or *affected party* provides information that indicates an agreed approach may not have been implemented or may not have been correctly applied, or that agreed *critical assumptions* may no longer be met.

13. Where in the view of the *scope review panel*, *review panel* or *lead tax administration*, an agreed approach in an *advance certainty outcome* has not been implemented or has not been correctly applied, or *critical assumptions* are no longer met, a *scope certainty review* or *comprehensive certainty review* shall be undertaken on the basis that affected elements of the *advance certainty outcome* do not apply. Other elements of the *advance certainty outcome* that are not affected continue to apply as agreed.

14. Where an *advance certainty outcome* does not apply, if the *review panel* or *lead tax administration* undertaking a *comprehensive certainty review* concludes that:

- a) one or more of the Group's approaches to the categorisation of Adjusted Revenues is incorrect;
- b) one or more of the indicators used by the Group to source Adjusted Revenues to Jurisdictions is not a *reliable indicator*; or
- c) an indicator is a *reliable indicator* but the Group's *internal control framework* is either not designed or operating effectively so as to ensure a correct application of the indicator,

the *review panel* or *lead tax administration* may propose that the relevant category or categories of Adjusted Revenues be sourced using a different *reliable method*. The *review panel* or *lead tax administration* shall not recommend the use of a different *reliable indicator* for a Period that has already ended unless the *coordinating entity* first confirms that the Group has access to information for this indicator to be a *reliable indicator* for the Period. Where the Group does not have access to this information the *review panel* or *lead tax administration* 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* or *lead tax administration*, the different *reliable indicator* should have been used by the Group. If this approach is agreed under Article 26 or 27, the view that the different

*reliable indicator* should have been used by the Group shall be included in the agreed *comprehensive certainty outcome* for the Period.

15. Where a request for *scope certainty* is accompanied by a request for *scope advance certainty*, and both reviews are undertaken by a *scope review panel*, the outcomes of the *scope certainty review* and *scope advance certainty review* with respect to the same provisions of the Convention or the same elements of a Group's *internal control framework*, should be consistent and should only differ if 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. Where the *scope certainty review* is undertaken by the *lead tax administration*, to the extent the *scope certainty review* considers issues described in Article 22(2), the *lead tax administration* and the *scope review panel* undertaking the *scope advance certainty review* shall consider work undertaken and decisions reached as part of the other review. The *lead tax administration* shall, to the extent possible and in accordance with Article 37, make available to the *scope review panel* any relevant information pertaining to its *scope certainty review* of the Group. Where the *scope review panel* and *lead tax administration* reach different conclusions with respect to a particular element, an explanation of this shall, to the extent possible, be included in the summary of outcomes of each review.

16. Where a request for *comprehensive certainty* is accompanied by a request for *advance certainty*, and both reviews are undertaken by a *review panel*, 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*, should be consistent and should only differ if 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. Where the *comprehensive certainty review* is undertaken by the *lead tax administration*, to the extent the *comprehensive certainty review* considers issues in Article 23(2), the *lead tax administration* and the *review panel* undertaking the *advance certainty review* shall consider work undertaken and decisions reached as part of the other review. The *lead tax administration* shall, to the extent possible and in accordance with Article 37, make available to the *review panel* any relevant information pertaining to its *comprehensive certainty review* of the Group. Where the *review panel* and *lead tax administration* reach different conclusions with respect to a particular element, an explanation of this shall, to the extent possible, be included in the summary of outcomes of each review.

17. If at any point during a *follow-up scope certainty review*, in the view of the *scope review panel* or *lead tax administration* undertaking the 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*.

18. Where paragraph 17 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* under Article 30 and:
  - i) submit a request for *scope certainty* with the *lead tax administration* under Article 22(7) within 90 days; or
  - ii) prepare an Amount A Tax Return and 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 in Article 14; and
    - B) 180 days after withdrawing its request under this paragraph.

Where the *coordinating entity* plans to take the action in this subparagraph it should be required to 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 Party of the *lead tax administration* shall inform the Competent Authorities of all Parties.

19. If, in the view of a *scope review panel*, *review panel* or *lead tax administration*, the *coordinating entity* is persistently late in providing information for purposes of a review without explanation or is acting in an uncooperative or non-transparent manner, including by providing inaccurate or incomplete information, the issue shall be raised with the *coordinating entity*. Where this issue is not resolved to the satisfaction of the *scope review panel*, *review panel* or *lead tax administration*, a two-thirds majority of the *scope review panel* or the *review panel* (or the *lead tax administration* where a review is not undertaken by a panel of tax administrations) may conclude that a *certainty outcome* cannot be provided, and the following steps shall apply:

- a) the *coordinating entity* shall be informed of this outcome by the *lead tax administration*;
- b) the relevant certainty process shall be brought to an end without an agreed *certainty outcome*;
- c) the *coordinating entity* or any other Group Entity shall not be permitted to submit a further request for certainty with respect to the Period for which a *certainty outcome* was not provided; and
- d) the Competent Authorities of all Parties shall be informed of this outcome by the Competent Authority of the Party of the *lead tax administration* and any restriction with respect to domestic compliance activities for the Period under Article 22 or 23 shall cease to apply.

The next time the *coordinating entity* submits a request for 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 shall not recur. Where a *scope certainty review* or *comprehensive certainty review* was undertaken by the *lead tax administration*, subparagraph (c) shall not apply and the next time a *scope certainty review* or *comprehensive certainty review* is undertaken for the Group, the *coordinating entity* may request a review be undertaken for the Period for which a *comprehensive certainty outcome* was not provided. These reviews shall be undertaken by a *review panel* in accordance with Article 24(1)(f) or (3)(c). Once the *coordinating entity* of a Group has been found to be persistently late in providing information without explanation or acting in an uncooperative or non-transparent manner by a *scope review panel*, *review panel* or *lead tax administration*, such that a *certainty outcome* cannot be provided under this paragraph, for purposes of future *certainty reviews* requested by a *coordinating entity* of the Group, this paragraph shall apply with the reference to a two-thirds majority of the *scope review panel* or *review panel* replaced with a reference to a majority of more than half of the *scope review panel* or *review panel*.

20. Where a request for *comprehensive certainty* has been submitted and a review is undertaken by a *review panel*, the outcomes of a review shall not include a change to the Amount A Tax Return and Common Documentation Package of the Covered Group for the Period, unless all members of the *review panel* agree the change is required or at least one of the following conditions is met.

- a) With respect to changes that would amend Adjusted Profit Before Tax:
  - i) either,
    - A) the total amount of the increase or decrease in Adjusted Profit Before Tax is at least 1 per cent of the Adjusted Profit Before Tax included in the Amount A Tax Return and Common Documentation Package, or
    - B) subparagraph (b) or (c) applies, and

- ii) the changes shall only include an amendment to an amount calculated under an individual subdivision within Annex B Section 2(1)(a) or (b) or under Annex B Section 2(1) (c), (d), (e) or (f) if the increase or decrease in that amount is at least one tenth of 1 per cent of the Adjusted Profit Before Tax included in the Amount A Tax Return and Common Documentation Package.
- b) With respect to changes that would amend the portion of Amount A Profit of the Covered Group upon which one or more *affected parties* may impose tax under Article 4 for the Period, either subdivision (i) or (ii) applies:
- i) the total increase or decrease in the Amount A Profit allocated to at least one *affected party* is at least 5 per cent of the portion allocated to that *affected party* in the Amount A Tax Return and Common Documentation Package, or
  - ii) the total increase or decreased in the positive or negative amount calculated by deducting the Amount A Profit allocated to any *affected party* in the Amount A Tax Return and Common Documentation Package from the *Amount A relief amount* for which that *affected party* has the obligation to eliminate double taxation of the Covered Group for the Period included in the Amount A Tax Return and Common Documentation Package is at least 5 per cent of that positive or negative amount.
- c) With respect to changes that would amend the *Amount A relief amount* for which one or more *affected parties* have the obligation to eliminate double taxation, either subdivision (i) or (ii) applies:
- i) the total increase or decrease in the obligation of at least one *affected party* is at least the lower of:
    - A) 5 per cent of the *Amount A relief amount* for which that *affected party* has the obligation to eliminate double taxation of the Covered Group for the Period included in the Amount A Tax Return and Common Documentation Package; or
    - B) 1 per cent of the total *Amount A relief amount* for the Period included in the Amount A Tax Return and Common Documentation Package, or
  - ii) the total increase or decrease in the positive or negative amount calculated by deducting the Amount A Profit allocated to any *affected party* in the Amount A Tax Return and Common Documentation Package from the *Amount A relief amount* for which that *affected party* has the obligation to eliminate double taxation of the Covered Group for the Period included in the Amount A Tax Return and Common Documentation Package is at least 5 per cent of that positive or negative amount.

For the purpose of applying subparagraph (b)(ii) or (c)(ii), an amendment that changes a positive amount to a negative amount or that changes a negative amount to a positive amount shall be considered to meet the condition in that subdivision. This paragraph shall not prevent a member of the *review panel* including in the outcomes of the review a proposal for a change where the precise financial impact cannot be determined based on available information, so long as it is able to describe the potential financial impact.

21. A review by a *scope review panel*, *review panel* or *lead tax administration* shall be completed:
- a) where the review is pursuant to a request for *scope certainty* within 180 days of the review commencing, or within 270 days of the review commencing where any of the criteria in Article 24(1)(a) through (c) apply;
  - b) where the review is pursuant to a request for *comprehensive certainty*, within 365 days of the review commencing; or

- c) where the review is pursuant to a request for *scope advance certainty* or for *advance certainty*, within 270 days of the review commencing,

unless additional time is needed to compensate for delays in the provision of information by the *coordinating entity* or for the resolution of issues where a Group has acted in an uncooperative or non-transparent manner, including by providing inaccurate or incomplete information, in which case the relevant period shall be extended by the same number of days as that delay. The first time a Group submits a request for certainty under a particular subparagraph of Article 22 or 23, the relevant period for a review in this paragraph shall be increased by 90 days.

22. Notwithstanding paragraph 21(a) and (b), where an *advance certainty outcome* applies and it is determined in the course of a *scope certainty review* or *comprehensive certainty review* that one or more of the *critical assumptions* applicable to that *advance certainty outcome* no longer applies, the time permitted for the review in paragraph 21 shall be increased by 90 days.

23. Where there is any aspect of the approach taken by a Group or Covered Group with respect to which any member of a *scope review panel*, *review panel* or *lead tax administration*, has not reached a decision by the end of the period in paragraph 21, a review may continue for a further 30 days in order for a decision to be reached. Where a review is undertaken by a *scope review panel* or *review panel*, the member of the panel or *lead tax administration* that has not reached a decision and that wishes to extend the review by 30 days shall give notice to other members of the panel no later than the last day of the period in paragraph 21. Where a decision is not reached at the end of this extended period:

- a) where a review is undertaken by a *scope review panel* or *review panel*, the relevant member of the panel shall be disregarded for the purpose of determining the outcomes of the review with respect to that aspect and, if all other members of the panel agree that the approach taken to that aspect is correct, or agree the change or changes that should be required to that aspect of the approach, the panel is treated as if it has reached agreement on this aspect; and
- b) where a review is undertaken by the *lead tax administration*, the *lead tax administration* shall be deemed to support the approach to that aspect taken by the Group or Covered Group.

24. The outcomes of a review by a *scope review panel*, *review panel* or *lead tax administration* shall be subject to agreement by:

- a) all *listed parties* in the case of a review pursuant to a request for *scope certainty* or a request for *scope advance certainty*; or
- b) all *affected parties* in the case of a review pursuant to a request for *comprehensive certainty* or a request for *advance certainty*.

Where the Parties in subparagraph (a) or (b) do not reach agreement with respect to any matter, that matter shall be referred to a *determination panel* for a decision under Article 27.

25. Within 30 days of a *scope certainty review* ending, the Competent Authority of the Party 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*, prepared using a standard template agreed by the Conference of the Parties. Where a review was undertaken by a *scope review panel*, this summary of outcomes shall be agreed with all members of the *scope review panel*. 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 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:
    - A) 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;
    - B) a compilation of the different positions of the members of the *scope review panel*; and
    - C) 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.

26. Within 30 days of a *follow-up scope certainty review* ending, the Competent Authority of the Party 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*, prepared using a standard template agreed by the Conference of the Parties. Where a review was undertaken by a *scope review panel*, this summary of outcomes shall be agreed with all members of the *scope review panel*. 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 package* that the Group continues not to be a Covered Group and that no further action shall be taken;
- 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; or
- c) where the review is undertaken by a *scope review panel*, a statement that the *scope review panel* has been unable to reach agreement including all members, identifying the aspects of the Group's *follow-up scope certainty documentation package* with respect to which agreement could not be reached, together with a compilation of the different positions of the members of the *scope review panel*.

27. Within 30 days of a *comprehensive certainty review* ending, the Competent Authority of the Party of the *lead tax administration* shall exchange with the Competent Authorities of all *affected parties* a summary of the outcomes of the *review panel* or *lead tax administration's* review, prepared using a standard template agreed by the Conference of the Parties. Where a review was undertaken by a *review panel*, this summary of outcomes shall be agreed with all members of the *review panel*. The summary of outcomes shall be accompanied by:

- a) a recommendation that *affected parties* agree the application of the Convention reflected in the Amount A Tax Return and 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 Amount A Tax Return and Common Documentation Package, which the *coordinating entity* should be required to reflect in a revised Amount A Tax Return and 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 Amount A Tax Return and Common Documentation Package, clearly identifying the aspects where,
  - i) the *review panel* agrees that the application of the Convention reflected in the Amount A Tax Return and Common Documentation Package is correct;
  - ii) the *review panel* agrees specific changes that should be made to the Amount A Tax Return and Common Documentation Package; and
  - iii) the *review panel* has been unable to reach agreement including all members, together with:
    - A) a description of the specific item or items in the Group's Amount A Tax Return and Common Documentation Package with respect to which the *review panel* has been unable to reach agreement;
    - B) a compilation of the different positions of the members of the *review panel*; and
    - C) 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.

28. Within 30 days of a *scope advance certainty review* or *advance certainty review* ending, the Competent Authority of the Party of the *lead tax administration* shall exchange with the Competent Authorities of all *listed parties* or *affected parties* a summary of the outcomes of the *scope review panel* or *review panel's* review, using a standard template agreed by the Conference of the Parties. This summary of outcomes shall be agreed with all members of the *scope review panel* or *review panel*.

- a) With respect to each of the proposed approaches in the *advance certainty documentation package*, the summary of outcomes shall be accompanied by:
  - i) a recommendation that *listed parties* or *affected parties* agree the proposed approach as filed by the *coordinating entity*;
  - ii) a recommendation that *listed parties* or *affected parties* agree specified changes to the proposed approach, which the *coordinating entity* should be required to reflect in a revised *advance certainty documentation package* in order for an *advance certainty outcome* to be agreed; or
  - iii) a statement that the *scope review panel* or *review panel* has been unable to reach agreement including all members on the proposed approach.
- b) The summary of outcomes shall also be accompanied by:
  - i) a recommendation that *listed parties* or *affected parties* agree that relevant aspects of the Group's *internal control framework* are both designed and operating effectively with

respect to one or more of the proposed approaches as filed by the *coordinating entity* or reflecting changes required in the summary of outcomes, as applicable;

- ii) a recommendation that *listed parties* or *affected parties* agree that specified improvements to relevant aspects of the Group's *internal control framework* with respect to one or more of these approaches be required in order for an *advance certainty outcome* to be agreed; or
  - iii) a statement that the *scope review panel* or *review panel* has been unable to reach agreement including all members.
- c) Where the *scope review panel* or *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*, or relevant aspects of the Group's *internal control framework*, the summary of outcomes of the review should clearly identify the aspects where:
- i) the *scope review panel* or *review panel* agrees that a proposed approach reflected in the *advance certainty documentation package* is correct or relevant aspects of the Group's *internal control framework* with respect to a proposed approach are both designed and operating effectively;
  - ii) the *scope review panel* or *review panel* agrees specific changes that should be required to a proposed approach or specific improvements that should be required to relevant aspects of the Group's *internal control framework* with respect to a proposed approach; and
  - iii) the *scope review panel* or *review panel* has been unable to reach agreement including all members, together with:
    - A) a description of the specific aspects of a proposed approach or *internal control framework* with respect to which the *scope review panel* or *review panel* has been unable to reach agreement;
    - B) a compilation of the different positions of the members of the *scope review panel* or *review panel*; and
    - C) the change to a proposed approach or improvements to relevant aspects of the *internal control framework* suggested by any member or members of the *scope review panel* or *review panel* to address this issue or each of these issues.

29. Where there is any aspect of the approach taken by the Group with respect to which the *lead tax administration* or any member of the *scope review panel* or *review panel* was not able to reach a decision by the deadline in paragraph 21, the summary of outcomes exchanged in paragraph 25, 26, 27 or 28 shall include an explanation of this and the reasons given by the *lead tax administration* or relevant member of the panel as to why it was unable to reach a decision. The summary of outcomes shall be accompanied by any information or explanations not contained in the documentation package filed with the request for certainty which was provided by the *coordinating entity* and was relevant to the *scope review panel*, *review panel* or *lead tax administration's* recommendation or statement.

30. Within 90 days of the exchange in paragraph 25, 26 or 27, the Competent Authority of a *listed party* or *affected party* may submit to the Competent Authority of the Party of the *lead tax administration* written comments:

- a) agreeing with the recommendation of the *scope review panel*, *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*, *follow-up scope certainty documentation package* or Amount A Tax Return and Common Documentation Package, as filed or reflecting changes recommended by the *scope review panel*, *review panel* or *lead tax administration*, that the Competent Authority disagrees with or which, in the view of the Competent Authority, does not support the recommendation of the *scope review panel*, *review panel* or *lead tax administration*;
  - ii) a paper explaining the Competent Authority's position;
  - iii) in the case of a *comprehensive certainty review*, the financial impact or description of the potential financial impact of the item or items on the Competent Authority's Jurisdiction and
  - iv) 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 a *scope review panel* or *review panel* has been unable to reach agreement including all members:
- i) agreeing with the position of the *scope review panel* or *review panel* with respect to aspects where the panel did reach agreement;
  - ii) disagreeing with the position of the *scope review panel* or *review panel* with respect to aspects where the panel did reach agreement, together with:
    - A) a description of the specific item or items in the Group's *scope certainty documentation package*, *follow-up scope certainty documentation package* or Amount A Tax Return and Common Documentation Package as filed or reflecting changes recommended by the *scope review panel* or *review panel*, that the Competent Authority disagrees with or which, in the view of the Competent Authority, does not support the position taken by the panel;
    - B) a paper explaining the Competent Authority's position;
    - C) in the case of a *comprehensive certainty review*, the financial impact or description of the potential financial impact of the item or items on the Competent Authority's Jurisdiction; and
    - D) 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* or *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 and, in the case of a *comprehensive certainty review*, the financial impact or description of the potential financial impact on the Competent Authority's Jurisdiction.

31. Within 90 days of the exchange in paragraph 28, the Competent Authority of a *listed party* or *affected party* may submit to the Competent Authority of the Party of the *lead tax administration* written comments:

- a) agreeing with a recommendation of the *scope review panel* or *review panel*;
- b) disagreeing with a recommendation of the *scope review panel* or *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 *scope review panel* or *review panel* does not reflect a correct 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 correct application of the Convention;
- c) in cases where the *scope review panel* or *review panel* has been unable to reach agreement including all members:
- i) agreeing with the position of the *scope review panel* or *review panel* with respect to aspects where the panel did reach agreement;
  - ii) disagreeing with the position of the *scope review panel* or *review panel* with respect to aspects where the panel did reach agreement, together with a paper explaining the Competent Authority's position as to:
    - A) why a proposed approach, as filed or reflecting changes recommended by the *scope review panel* or *review panel*, does not reflect a correct application of the Convention; and
    - B) 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 correct application of the Convention;
  - iii) commenting on the positions of members of the *scope review panel* or *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; or
- d) disagreeing with a recommendation or conclusion with respect to relevant aspects of 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 relevant aspects of the Group's *internal control framework* with respect to one or more proposed approaches seem to be designed and operating effectively; or
  - ii) why in the view of the Competent Authority relevant aspects of this *internal control framework* do not seem to be designed and operating effectively, together with specific improvements proposed by the Competent Authority to address this.

32. Where a request for *comprehensive certainty* has been submitted, no *affected party* which is not the *lead tax administration* or member of the *review panel* undertaking a review shall propose any change to the approach recommended by the *review panel* or *lead tax administration* unless:

- a) it is able:
  - i) to identify a financial impact in its Jurisdiction; or
  - ii) where it is not possible to identify a financial impact, to describe a potential financial impact in its Jurisdiction;
- b) the change meets at least one of the following conditions:
  - i) With respect to changes that would amend Adjusted Profit Before Tax:

- A) either,
    - 1) the total increase or decrease in Adjusted Profit Before Tax is at least 1 per cent of the Adjusted Profit Before Tax included in the recommendation of the *review panel* or *lead tax administration*, or
    - 2) subdivision (ii) or (iii) applies, and
  - B) the change shall only include an amendment to an amount calculated under an individual subdivision within Annex B Section 2(1)(a) or (b) or under Annex B Section 2(1)(c), (d), (e) or (f) if the increase or decrease in that amount is at least one tenth of 1 per cent of the Adjusted Profit Before Tax included in the recommendation of the *review panel* or *lead tax administration*.
- ii) With respect to changes that would amend the portion of Amount A Profit of the Covered Group upon which one or more *affected parties* may impose tax under Article 4 for the Period, either clause (A) or (B) applies:
- A) the total increase or decrease in the Amount A Profit allocated to that *affected party* is at least 5 per cent of the portion allocated to the *affected party* in the recommendation of the *review panel* or *lead tax administration*; or
  - B) the total increase or decrease in the positive or negative amount calculated by deducting the Amount A Profit allocated to that *affected party* in the Amount A Tax Return and Common Documentation Package from the *Amount A relief amount* for which that *affected party* has the obligation to eliminate double taxation of the Covered Group for the Period included in the Amount A Tax Return and Common Documentation Package is at least 5 per cent of that positive or negative amount.
- iii) With respect to changes that would amend the *Amount A relief amount* for which one or more *affected parties* have the obligation to eliminate double taxation, either clause (A) or (B) applies:
- A) the total increase or decrease in the obligation of that *affected party* is at least the lower of:
    - 1) 5 per cent of the *Amount A relief amount* for which the *affected party* has the obligation to eliminate double taxation of the Covered Group for the Period included in the recommendation of the *review panel* or *lead tax administration*; and
    - 2) 1 per cent of the total *Amount A relief amount* for the Period included in the recommendation of the *review panel* or *lead tax administration*, or
  - B) the total increase or decrease in the positive or negative amount calculated by deducting the Amount A Profit allocated to that *affected party* in the Amount A Tax Return and Common Documentation Package from the *Amount A relief amount* for which that *affected party* has the obligation to eliminate double taxation of the Covered Group for the Period included in the Amount A Tax Return and Common Documentation Package is at least 5 per cent of that positive or negative amount.

For the purpose of applying subdivision (ii)(B) or (iii)(B), an amendment that changes a positive amount to a negative amount or that changes a negative amount to a positive amount shall be considered to meet the condition in that subdivision. Nothing in this subparagraph shall prevent the Competent Authority of an *affected party* submitting written comments that

propose a change to the approach recommended by the *review panel* or *lead tax administration* where the precise financial impact in its Jurisdiction cannot be determined based on available information, so long as it is able to describe the potential financial impact in its Jurisdiction, or that disagree with a change to an amount in a Group's Amount A Tax Return and Common Documentation Package proposed by the *review panel* or *lead tax administration*, if the proposal of the Competent Authority is to reinstate the amount included by the Group;

- c) the proposed change is consistent with a *comprehensive certainty outcome* agreed pursuant to a request for *comprehensive certainty* for the same Group for an earlier Period in which it was an *affected party*, unless the Competent Authority includes in its comments an explanation of why such change is necessary for a correct application of the Convention;
- d) the proposed change is consistent with an *advance certainty outcome* agreed pursuant to a request for *advance certainty* that applies for the Period, unless the *affected party* was not an *affected party* when that *advance certainty outcome* was agreed, or it has provided evidence that one or more *critical assumptions* contained in that *certainty outcome* are no longer met, and
- e) the proposed change is consistent with the provisions of Article 26 and of this Annex.

33. Where a Competent Authority of a *listed party* or *affected party* submits written comments following an exchange under paragraph 25, 26 or 28, that are inconsistent with an earlier agreed *scope certainty outcome*, *comprehensive certainty outcome* or *advance certainty outcome* for the same Group for a Period in which it was a *listed party* or *affected party*, an explanation as to the reason why such comments are necessary for a correct application of the Convention should be provided.

34. Where the Competent Authority of a *listed party* or *affected party* does not submit any comments on a recommendation of the *scope review panel*, *review panel* or *lead tax administration* in accordance with paragraph 30 or 31, this shall be taken for purposes of the Convention as agreement with that recommendation.

35. Where the Competent Authority of a *listed party* or *affected party* has submitted written comments that disagree with the recommendation of the *scope review panel*, *review panel* or *lead tax administration*, or which propose an alternative approach to resolve disagreement between *scope review panel* or *review panel* members, the panel or *lead tax administration* shall determine within 60 days of the deadline for comments whether to adopt the Competent Authority's proposal. If a *scope review panel*, *review panel* or *lead tax administration* has not determined to accept the Competent Authority's proposal at the end of 60 days, it shall be deemed not to accept this proposal. Either,

- a) if the *scope review panel*, *review panel* or *lead tax administration* does adopt the Competent Authority's proposal, the Competent Authority of the Party of the *lead tax administration* shall within 30 days of this decision being reached exchange with the Competent Authorities of all *listed parties* or *affected parties* a revised recommendation in accordance with paragraph 25, 26, 27 or 28, accompanied by any written explanation provided by the *coordinating entity*. The Competent Authorities of other *listed parties* or *affected parties* may submit written comments in accordance with paragraph 30 or 31, which shall be limited to elements of the recommendation that have been revised. This is not a further opportunity to provide comments on elements that were included in the original recommendation. If the Competent Authority of one or more *listed parties* or *affected parties* submit written comments disagreeing with the revised recommendation of the *scope review panel*, *review panel* or *lead tax administration*, issues where there is disagreement shall be submitted to a *determination panel* for a final outcome under Article 27; or
- b) if the *scope review panel*, *review panel* or *lead tax administration* does not accept the Competent Authority's proposal, it shall consult with that Competent Authority to explore whether, in light of the explanation provided by the Competent Authority and other information

it can provide, the Competent Authority is still of the opinion that changes are needed or wishes to withdraw its disagreement with the recommendation. This consultation may extend up to 30 days following the decision not to adopt the Competent Authority's proposal.

## **Section 2 – A Determination Panel to Resolve Disagreements**

1. Where a *determination panel* does not reach agreement by *consensus* as to the alternative outcome that is chosen by the panel with respect to an issue, each *determination panel* member shall indicate the alternative outcome that it considers reflects the most accurate application of the Convention. Where an alternative outcome is considered to represent the most accurate application of the Convention by more than one half of *determination panel* members, that alternative outcome is chosen by the *determination panel*.

2. Where an alternative outcome is not chosen under the process in paragraph 1, each *determination panel* member shall rank the remaining alternative outcomes in the order in which it considers them to reflect the most accurate application of the Convention. All alternative outcomes shall be included in these rankings and no alternative outcomes may be ranked equally by a *determination panel* member. The Chair shall compare the rankings for each possible pair of alternative outcomes. An alternative outcome that is preferred over a second alternative outcome (i.e., that is ranked as a more accurate application of the Convention than the second alternative outcome) by a majority on the panel is said to be "majority-preferred" over that second alternative outcome. If, any alternative outcome is majority preferred over all of the other alternative outcomes, that alternative outcome is chosen by the *determination panel*.

3. Where an alternative outcome is not chosen under the process in paragraph 2, the Chair shall follow the process in this paragraph to remove one or more alternative outcomes from those that may be chosen by the *determination panel*.

- a) The Chair shall retain as alternative outcomes that the *determination panel* may choose:
  - i) the alternative outcome or alternative outcomes which are majority-preferred over the greatest number of other alternative outcomes;
  - ii) any other alternative outcome which is majority preferred over any of the alternative outcomes retained in subdivision (i); and
  - iii) any other alternative outcome which is majority preferred over any of the alternative outcomes retained in subdivision (ii).

The Chair shall repeat the process in subdivisions (ii) and (iii) until that process ceases to identify any further alternative outcomes for retention. All alternative outcomes that are not retained under subdivision (i), (ii) or (iii) are removed by the Chair from the list of outcomes that the *determination panel* may choose. The ranking of the remaining alternative outcomes by each *determination panel* member shall be adjusted to reflect only those alternative outcomes that remain available to be chosen.

- b) The remaining alternative outcome considered by the fewest *determination panel* members to be the most accurate application of the Convention shall also be removed by the Chair from the list of alternative outcomes available to be chosen, and the ranking of the remaining alternative outcomes by each *determination panel* member shall be adjusted to reflect only those alternative outcomes that remain available to be chosen. Where in applying this subparagraph more than one alternative outcome is considered by the fewest *determination panel* members to be the most accurate application of the Convention, the evaluation of these alternative outcomes shall be repeated based on second place rankings, and then (in case of a tie regarding the second place rankings) third place rankings, and so on, to identify the

alternative outcome to be removed from the list of alternative outcomes available to be chosen. In the event that, having taken into account the lowest place rankings, two or more alternative outcomes cannot be distinguished because the number of determination panel members that have placed them at each level of ranking is identical, each of these alternative outcomes shall be removed from the list of those available to be chosen.

4. Where, after the operation of paragraph 3(b), any remaining alternative outcome is ranked as reflecting the most accurate application of the Convention among the alternative outcomes remaining by a majority of *determination panel* members, that alternative outcome is chosen by the *determination panel*. Otherwise, the process in paragraph 3(b) is repeated to further reduce the alternative outcomes that remain available to be chosen.

5. The process in paragraph 4 is repeated, if necessary, until an alternative outcome is ranked as reflecting the most accurate application of the Convention among the alternative outcomes remaining by a majority of *determination panel* members, at which point that alternative outcome is chosen by the *determination panel*.

6. In the event that, following the process in paragraphs 3 through 5, no alternative outcome is ranked as reflecting the most accurate application of the Convention among the alternative outcomes remaining by a majority of *determination panel* members, the process in paragraph 3(b) shall be repeated with the rankings provided by the Chair in paragraph 2 disregarded. Where, after this, any remaining alternative outcome is ranked as reflecting the most accurate application of the Convention among the alternative outcomes remaining by a majority of *determination panel* members, that alternative outcome is chosen by the *determination panel*. Otherwise, the process in paragraph 3(b) is repeated taking into account the rankings provided by all *determination panel* members, to further reduce the alternative outcomes that remain available to be chosen. Paragraphs 4 and 5 shall continue to apply.

### **Section 3 – Composition of a Determination Panel**

The following provisions shall apply for the purpose of applying Article 28.

1. A *standing pool* comprising *independent experts* shall be established for purposes of the *determination panel* as follows:
  - a) 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.
  - b) 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 Secretariat of the Conference of the Parties those individuals' names and detailed curriculum vitae together with a statement explaining how they fulfil the requirements of an *independent expert* under paragraph 2. There shall be no requirement that nominated individuals are residents or citizens of or have any connection with a nominating Party.
  - c) A Party shall submit nominations to the Secretariat of the Conference of the Parties within 60 days of the entry into effect of this Convention for such Party. The Secretariat of the Conference of the Parties shall then communicate these nominations and accompanying documentation to the *screening committee* as soon as possible.
  - d) The Secretariat of the Conference of the Parties 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 2 and that the nominated individual is suitable for this role.

- e) The decision of the *screening committee* with respect to each nominated individual shall be communicated to the Party nominating such individual by the Secretariat of the Conference of the Parties within 60 days from the date of their nomination.
- f) 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*.
- g) The Secretariat of the Conference of the Parties shall invite each Party to nominate one additional *independent expert* each if the total number of nominations received under subparagraph (b) 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 subparagraph (d) 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*. Notwithstanding this, the Conference of the Parties may agree to revise the number of additional nominations allowed or the maximum number of individuals that may be nominated by a Party under this paragraph in view of the total size and composition of the *standing pool*.
- h) Once a nominated candidate is added to the draft roster of the *standing pool*, the details of such candidate shall be shared by the Secretariat of the Conference of the Parties 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 2 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 Secretariat of the Conference of the Parties shall communicate this addition to the Parties as soon as possible thereafter. Within 30 days of the communication by the Secretariat of the Conference of the Parties of a candidate not being added to the *standing pool* due to objections made under this subparagraph, the Party nominating the individual may nominate one alternative individual for consideration as an *independent expert* in the *standing pool*.
- i) If a Party establishes to the satisfaction of the *screening committee* that an individual in the *standing pool* fails to remain an *independent expert* under paragraph 2 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 a simple majority 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 the individual may nominate one alternative individual for consideration as an *independent expert* in the *standing pool*.

2. An individual shall be considered an *independent expert* for purposes of this Section where the individual:

- a) is a person of standing 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 government and was not in such a situation at any time during the previous twelve months, irrespective of whether the individual is/was on secondment to a regional tax organisation or an *international organisation* during this time (for 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 to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting or pursuant to the provisions of any other bilateral or multilateral agreement or domestic law provision providing for the arbitration or resolution of unresolved issues in a mutual agreement procedure case, shall not be considered based on such appointment to work or have worked for or on behalf of any government);
- 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 and did not provide such services at any time during the previous twelve months; and
- f) does not work for or on behalf of a regional tax organisation or *international organisation* that is not specified in the list below, which may be revised by an agreement of the Conference of the Parties as appropriate:
  - i) Organisation for Economic Cooperation and Development (OECD);
  - ii) United Nations (UN);
  - iii) World Bank Group (WBG);
  - iv) International Monetary Fund (IMF);
  - v) African Tax Administration Forum (ATAF);
  - vi) Inter-American Center of Tax Administrations (CIAT); and
  - vii) Asian Development Bank (ADB).

For purposes of this paragraph, “limited tax advisory services” refers to tax advisory services where the annual income earned by an individual from such services provided during the current year is less than 30 per cent of the individual’s total annual income, including income from employment, contractual services, pensions or other retirement benefits.

3. An individual shall be considered a *government official* for purposes of this Section where the individual:

- a) is a person of standing and may be relied upon to conduct themselves in a professional manner;
- b) presently works for or on behalf of a function in the government of a Jurisdiction, not being the tax audit and examination function in its tax administration, has at least three years of relevant experience in working in the field of international taxation or transfer pricing and has at least one year of such relevant experience in working for the government of such Jurisdiction;
- c) has sufficient expertise in international taxation and/or financial accounting matters.

4. A *screening committee* shall be established for purposes of the *determination panel* as follows:



- a) Each Party may nominate one individual for consideration to be a member of the *screening committee* every five years as described in paragraph 4(b). Each nominated individual shall be a senior member in the government of that Party and shall provide to the Secretariat of the Conference of the Parties 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.
- b) A Party shall submit its first nomination for consideration as a member of the *screening committee* to the Secretariat of the Conference of the Parties within 30 days of the entry into effect of this Convention for such Party and subsequent nominations within 30 days from a call nominations initiated by the Secretariat of the Conference of the Parties every five years from the date of constitution of the first *screening committee* under this paragraph. The Secretariat of the Conference of the Parties shall communicate these nominations to the Chair(s) of the Conference of the Parties as soon as possible thereafter.
- c) The Chair(s) of the Conference of the Parties shall, on each occasion when nominations are received from the Secretariat of the Conference of the Parties, following consultation with the Parties, make a proposal to all Parties for the composition of the *screening committee* for a term of five years, ensuring that:
  - i) the selected members have adequate seniority and objectivity,
  - ii) all geographical regions are adequately represented,
  - iii) Parties most likely to be affected by the outcomes in *determination panels* are adequately represented.
- d) 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*, for a term of five years from this decision. Where *consensus* is not possible within 30 days from the reference of the proposal to the Parties, the composition shall be decided by a two-thirds majority of the Parties.

5. The Secretariat of the Conference of the Parties 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 Secretariat of the Conference of the Parties shall inform all selected *independent experts* and *government officials* of their selection as soon as possible thereafter.

6. Within 30 days from being informed by the Secretariat of the Conference of the Parties of their selection, the selected *independent experts* shall inform the Secretariat of the Conference of the Parties whether they are willing to participate in the Panel and conflicted to act in a Panel under paragraph 12(b). Where *independent experts* are willing to participate in the Panel and not conflicted to act in a Panel under paragraph 12(b), they shall along with this information provide to the Secretariat of the Conference of the Parties a signed statement attesting that they are not conflicted under paragraph 12(b) at the time of accepting appointment, that they undertake to remain not conflicted under paragraph 12(b) throughout the proceeding as well as for three years following the relevant proceeding and that they will act with objectivity, independence and impartiality. The Secretariat of the Conference of the Parties shall share this signed statement with all *listed parties* (for *determination panels* arising from *scope certainty reviews* or *follow-up scope certainty reviews*) or *affected parties* (for all other *determination panels*) as soon as possible following receipt.

7. 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 Secretariat of the Conference of the Parties under paragraph 6.

- b) such individual is conflicted to act in a *determination panel* under paragraph 12(b) as communicated to the Secretariat of the Conference of the Parties under paragraph 6 or where a *listed party* (for *determination panels* arising from *scope certainty reviews* or *follow-up scope certainty reviews*) or an *affected party* (for all other *determination panels*) can establish that such individual is conflicted to act in a *determination panel* under paragraph 12(b) to the satisfaction of the *screening committee* within 30 days of the communication of the signed statement provided for under paragraph 6 to that *listed party* or *affected party*.
- 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*.

8. An individual shall not act as an *independent expert* or *government official* in a *determination panel* where such individual is a national of a Party (other than that of the *lead tax administration*) that does not maintain diplomatic relations with another Party with respect to which one of the alternative outcomes being considered by the *determination panel* under Article 27 results in:

- a) a change in the allocation of Amount A Profit or the obligation to provide relief with respect to a portion of the *Amount A relief amount* under this Convention only for that other Party; or
- b) a change in the allocation of Amount A Profit or the obligation to provide relief with respect to a portion of the *Amount A relief amount* under this Convention of the lower of 5 per cent or EUR 10 million for that other Party,

Where such an individual is selected at random from the *standing pool* as an *independent expert* for a *determination panel*, the Party that nominated the individual to the *standing pool* shall be allowed to nominate another individual who is not a national of the first mentioned Party, who would act as an *independent expert* in the *determination panel* 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 2 and that the nominated individual is suitable for the role. Where such an individual is selected as a *government official* for a *determination panel*, this individual would be replaced by another *government official* falling under the respective category that expressed interest in that *determination panel*, subject to the rules provided in Article 28 where there are no additional *affected parties* in the category.

9. The Secretariat of the Conference of the Parties shall provide written confirmation to each selected *independent expert* and *government official* of their selection as soon as possible after the receipt of the signed statement provided for under paragraph 6, and subject to replacement if required as under paragraph 7. Each *independent expert* and *government official* shall return a signed copy of that confirmation to the Secretariat of the Conference of the Parties within 15 days of its receipt. The *determination panel* shall be considered established on the date when the last of these signed copies is received by the Secretariat of the Conference of the Parties.

10. The fees payable to the *independent experts* in a *Determination panel* shall be addressed as follows:

- a) The fees payable to the *independent experts* appointed to the *determination panel* under this Section shall be EUR 1 000 per person per day. The expenses of the *independent experts* appointed to the *determination panel* under this Section shall be reimbursed in accordance with a standard schedule to be agreed by the Conference of the Parties and until such a schedule is agreed, in accordance with the average of the usual amount reimbursed to members of the staff of the Competent Authorities of the *listed parties* (for *determination panels* arising from *scope certainty reviews* or *follow-up scope certainty reviews*) or *affected parties* (for all other *determination panels*).

- b) Each *independent expert* appointed to the *determination panel* under this Section shall be compensated for no more than seven days of work in total, unless it is agreed by *consensus* among *listed parties* (for *determination panels* arising from *scope certainty reviews* or *follow-up scope certainty reviews*) or *affected parties* (for all other *determination panels*) prior to this deadline that additional days are required.
- c) If the *relevant group* concerned by a *determination panel* is of the view that an *independent expert* did not act in line with their obligations under this Section and with respect to confidentiality of information shared by such *relevant group* under this Convention in such *determination panel*, the *coordinating entity* of the *relevant group* may file a complaint to the *lead tax administration* within 60 days of a *determination panel* decision. If more than two-thirds majority of the *listed parties* (for *determination panels* arising from *scope certainty reviews* or *follow-up scope certainty reviews*) or *affected parties* (for all other *determination panels*) are of the view that the complaint has merit following consideration, no fee shall be payable and no expenses shall be reimbursed to such *independent expert* under this Section.
- d) *government officials* in the *determination panel* shall serve in their official capacity and shall not be entitled to fees in addition to the remuneration they receive from their Governments and shall be reimbursed only for expenses in accordance with the rules generally applicable to a member of the staff of the relevant Competent Authority.

11. *Independent experts* chosen for a *determination panel* under this Section shall agree in writing, prior to the disclosure to them of any information relating to the *determination panel* proceeding, to treat such information consistently with the confidentiality and nondisclosure obligations described in the provisions of this Convention related to exchange of information and administrative assistance and under the applicable laws of all *listed parties* (for *determination panels* arising from *scope certainty reviews* or *follow-up scope certainty reviews*) or *affected parties* (for all other *determination panels*).

12. If a *listed party* (for *determination panels* arising from *scope certainty reviews* or *follow-up scope certainty reviews*) or an *affected party* (for all other *determination panels*) is of the view that an *independent expert* concerned by a *determination panel* did not act in line with their obligations under this Section and with respect to confidentiality of information shared by such *relevant group* under this Convention in such *determination panel* prior to conclusion of proceedings, they may file a complaint to the *lead tax administration* at any time during the process. If more than a simple majority of the *listed parties* (for *determination panels* arising from *scope certainty reviews* or *follow-up scope certainty reviews*) or *affected parties* (for all other *determination panels*) do not object within 30 days of the complaint, the *independent expert* in question selected from the *standing pool* shall be replaced with another *independent expert* selected at random from the *standing pool*, respectively.

13. The total cost of fees and expenses payable to *independent experts* shall be met by:

- a) *tax certainty user fees* paid under Article 22 or 23; and
- b) contributions by Parties, in proportion to the cost sharing allocation key.

14. For purposes of paragraph 13, the cost sharing allocation key for a year shall be based on the following percentage of the average Gross Domestic Product of a Party for the five immediately preceding calendar years:

- a) for a Party that is a high income Jurisdiction, 100 per cent;
- b) for a Party that is an upper-middle income Jurisdiction, 75 per cent;
- c) for a Party that is a lower-middle income Jurisdiction, 50 per cent; and
- d) for a Party that is a low income Jurisdiction, 40 per cent.

The income level of a Party for purposes of subparagraphs (a) through (d) is based on the classification by the World Bank by reference to *gross national income* per capita calculated using the World Bank Atlas method, published most recently prior to the first day of the relevant year.

15. For 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 the conduct of a review;
- b) an individual is conflicted to act in a *determination panel* involving a *relevant group* where, at the time of appointment:
  - i) the individual or a Family Member is or was an employee, contractor, partner or member of the *relevant group* or any of its Entities, in the previous five years, or continues to derive benefits of any kind from such engagements or relationships that existed in any prior Period;
  - ii) the individual or a Family Member is or was a *significant investor* in the *relevant group* or any of its Entities, in the previous two years, or continues to derive benefits of any kind from such investments that existed in any prior Period;
  - iii) the individual or a Family Member has or had *significant business dealings* with the *relevant group* or any of its Entities, in the previous five years, or continues to derive benefits of any kind from such transactions or activities in any prior Period;
  - iv) the individual, directly or as part of or on behalf of an enterprise or firm, is or was personally involved in providing, or supervising the provision of, tax, advisory, consulting, accounting or audit services to the *relevant group* or any of its Entities in the previous five years;
  - v) the individual, directly or as part of or on behalf of an enterprise or firm, is or was personally involved in providing, or supervising the provision of, tax, advisory, consulting, accounting or audit services to the *relevant group* or any of its Entities with respect to an arrangement or transaction being considered by the *determination panel*; or
  - vi) the individual or a Family Member holds or held a *funded academic position* in the previous five years, or continues to derive benefits of any kind from such engagements or relationships that existed in any prior Period;
- c) the term “funded academic position” means an academic position directly funded by a Covered Group or a Covered Group’s authorised representative or advisor. This term shall not include an academic position that is indirectly funded through amounts provided to an educational institution by a Covered Group or its authorised representatives or advisors but not intended to fund the specific position, nor academic positions funded with income generated by a shareholding or another equity interest in the Covered Group held by an educational institution;
- d) the term “significant investor” means an individual who, individually or through an Entity owned or controlled by the individual, owns rights to more than 5 per cent of the profits, capital, reserves, or voting rights of any Entity of the *relevant group* or holds capital having present value, determined on the basis of assets or cash flow, in excess of EUR 50 000 in the Entities of the *relevant group* individually or in aggregate;

- e) the term “significant business dealings” means a business transaction or a series of transactions that, during any one Period, exceed the lesser of EUR 15 000 or 1 per cent of a Covered Group’s total operating expenses;
- f) the term “consensus-minus-one” means *consensus* among all members concerned except for one member.

#### **Section 4 – Definitions**

For the purpose of applying Article 32(e)(iii), relevant supporting documentation includes documentation confirming that the Group has or is likely to have Adjusted Revenues in the Party above the applicable nexus in accordance with Article 8, which may include but is not limited to:

- a) 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;
- b) in cases where the assertion relates to revenues from components, other services, or *intangible property* not described in subparagraph (a), (c) or (e): 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 Adjusted Revenues that meet the applicable nexus in accordance with Article 8 in a Party if, based on information contained in its Amount A Tax Return and Common Documentation Package, the Group is using the *allocation key* for the purpose of sourcing revenues;
- c) in cases where the assertion relates to revenues from physical services (*location-specific services*, non-online advertising services, online intermediation of *location-specific services*, transport services, *intangible property* supporting such physical services), or intangible property related to such services: tax documentation, or business licensing information or regulatory information demonstrating the performance of the physical service in the Jurisdiction of the Party;
- d) in cases where the assertion relates to revenues from digital businesses (online advertising services, user data, digital content that is not a component, online intermediation of digital content or services that are not *location-specific services*) or customer reward programs: 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;
- e) in cases where the assertion relates to revenues from digital content, other services, or *intangible property* related to such services: evidence of expenditure or transactions monitored through foreign exchange controls made by business customers in the location of the Party;
- f) in cases where the assertion relates to revenues from resellers of digital content or other 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 Adjusted Revenues that meet the applicable nexus in accordance with Article 8 in a Party if, based on information contained in its Amount A Tax Return and Common Documentation Package, the Group is using the *allocation key* for the purpose of sourcing revenues;

- g) in cases where the assertion relates to revenues from *immovable property*: legal, regulatory or physical evidence of the location of the *immovable property* in the Party;
- h) in cases where the assertion relates to revenues from government grants: evidence of the contribution of the Party to government grants; or
- i) in cases relating to the *initial revenue sourcing transition phase*: information as per the sub-categories above, or projected revenue based on the relevant *allocation key*. Projected revenue based on the relevant *allocation key* shall only be taken as sufficient to demonstrate a reasonable basis that the Group has Adjusted Revenues that meet the applicable nexus in accordance with Article 8 in a Party if, based on information contained in its Amount A Tax Return and Common Documentation Package, the Group is using the relevant *allocation key* for the purpose of sourcing revenues.

## ANNEX G – SUPPLEMENTARY PROVISIONS FOR SECTION 3 OF PART V

### Section 1 – Statement of Information and Terms of Reference

1. Within 30 days of a request for a dispute resolution panel pursuant to Article 35(1), both *MAP competent authorities* shall agree a brief statement of information to be used to evaluate whether a candidate to be a dispute resolution panel member satisfies the eligibility requirements identified in Section 3. The statement of information will identify the Entities of the Covered Group directly affected by the case and contain a general description of the *related issues* to be resolved in the case. The *MAP competent authority*, or a dispute resolution panel member selected by the *MAP competent authority*, may disclose the statement of information, if the confidentiality of the information is protected and such disclosure is permitted by the law of the relevant *covered jurisdiction*, to a candidate to be a dispute resolution panel member to check whether that candidate satisfies the eligibility requirements identified in Section 3.

2. For purposes of Article 35:

- a) The *MAP competent authorities* shall agree “terms of reference” for the case within 60 days of a request for a dispute resolution panel pursuant to Article 35(1). The *terms of reference* shall include:
  - i) a description of the relevant business activities of the Covered Group;
  - ii) a description of the *related issues* in dispute in the case;
  - iii) a description of the matters to be considered for the resolution of the case, including identification of all matters in the case previously agreed between the *MAP competent authorities*; and
  - iv) a description of the final position taken by each *MAP competent authority* in the discussion of the unresolved matters that prevent mutual agreement by the *MAP competent authorities*.

The *MAP competent authorities* may also provide logistical or procedural information in the *terms of reference*.

- b) The *terms of reference* shall be communicated to the Chair on the date of his or her appointment, or as soon thereafter as possible.
- c) If the *terms of reference* have not been agreed by the date for submission of the proposed resolutions and supporting position papers provided in Section 5, both *MAP competent authorities* shall send to each other and to the Chair their most recent written proposals for the *terms of reference* at the same time they submit their proposed resolutions and position papers to the Chair. All the matters identified as unresolved in each of these proposals for the *terms of reference* shall be treated as unresolved for purposes of the subsequent proceedings. Where these written proposals reflect a disagreement regarding whether an unresolved issue is a *related issue*, the dispute resolution panel shall resolve that disagreement, as provided in Article 35(1)(b).

## **Section 2 – Competent Authority Agreement on Mode of Application**

The *MAP competent authorities* of the *covered jurisdictions* may by mutual agreement settle the mode of application of the provisions contained in Article 35 and Annex G.

## **Section 3 – Appointment of Dispute Resolution Panel Members**

Except to the extent that the *MAP competent authorities* of the *covered jurisdictions* mutually agree on different rules, the following provisions shall apply for purposes of Article 35 and Annex G:

- a) The dispute resolution panel shall consist of five individual panel members.
- b) Within 60 days of the request for a dispute resolution panel pursuant to Article 35(1), each *MAP competent authority* shall appoint:
  - i) one panel member from the staff of that *MAP competent authority*; and
  - ii) one panel member chosen from the list of independent experts nominated by it under Section 3(g).

The four dispute resolution panel members appointed pursuant to this subparagraph shall, within 30 days of the latest of their appointments, appoint a Chair from the persons on the lists of independent experts nominated by both *MAP competent authorities* under subparagraph (g) who have indicated their willingness to serve as Chair. Failing agreement between the four members, the two dispute resolution panel members appointed pursuant to subdivision (ii) shall, within 60 days of the latest of their appointments, appoint a Chair from the persons on the lists of independent experts nominated by both *MAP competent authorities* under subparagraph (g) who have indicated their willingness to serve as Chair. The Chair shall not be a national or resident of either *covered jurisdiction*.

- c) A member of the dispute resolution panel will be considered to have been appointed when a letter confirming that appointment and signed by both the panel member and the person or persons who have the power to appoint that panel member has been communicated to both *MAP competent authorities*.
- d) In the event that the *MAP competent authority* of a *covered jurisdiction* fails to appoint any member of the dispute resolution panel within the time period specified in subparagraph (b):
  - i) in the case of an appointment pursuant to subparagraph (b)(i), the dispute resolution panel shall proceed with neither a panel member from the staff of that *MAP competent authority* nor the panel member appointed by that *MAP competent authority* pursuant to subparagraph (b)(ii); and
  - ii) in the case of an appointment pursuant to subparagraph (b)(ii), the *MAP competent authority* of the other *covered jurisdiction* shall appoint a panel member at random from individuals on the list of independent experts nominated by the first-mentioned *MAP competent authority* under subparagraph (g). The *MAP competent authority* of the other *covered jurisdiction* shall make that appointment within 30 days of the deadline provided in subparagraph (b)(ii).
- e) If the panel members appointed pursuant to subparagraph (b) fail to appoint the Chair within the time period specified therein, the *MAP competent authorities* shall appoint the Chair at random from the persons on the lists of independent experts nominated by both *MAP competent authorities* under subparagraph (g) who have indicated their willingness to serve



as the Chair of a dispute resolution panel and who are not nationals or residents of either *covered jurisdiction*. The *MAP competent authorities* shall make that appointment within 30 days of the deadline provided subparagraph (b) for the appointment of the Chair.

- f) Each independent expert appointed to the dispute resolution panel pursuant to subparagraph (b)(ii) and the Chair must meet all of the following conditions at the time of appointment:
- i) They must fulfil the requirements provided in subparagraph (g).
  - ii) They must not be conflicted to act on a dispute resolution panel involving the Covered Group. For these purposes, an individual is conflicted to act on a dispute resolution panel involving the Covered Group where, at the time of appointment:
    - A) the individual or a Family Member is or was an employee, contractor partner or member of the Covered Group or any of its Entities, in the previous five years, or continues to derive benefits of any kind from such engagements or relationships that existed in any prior Period;
    - B) the individual or a Family Member is or was a *significant investor* in the Covered Group or any of its Entities, in the previous two years, or continues to derive benefits of any kind from such investments that existed in any prior Period;
    - C) the individual or a Family Member has or had *significant business dealings* with any Entity of the Covered Group in the previous five years or continues to derive benefits of any kind from such transactions or activities in any prior Period;
    - D) the individual, directly or as part of or on behalf of an enterprise or firm, is or was personally involved in providing, or supervising the provision of, tax, advisory, consulting, accounting or audit services to the Covered Group or any of its Entities in the previous five years;
    - E) the individual, directly or as part of or on behalf of an enterprise or firm, is or was personally involved in providing, or supervising the provision of, tax, advisory, consulting, accounting or audit services with respect to an arrangement or transaction at issue in the mutual agreement procedure case concerned by the request made under Article 35(1); or
    - F) the individual or a Family Member holds or held a *funded academic position* in the previous five years, or continues to derive benefits of any kind from such engagements or relationships that existed in any prior Period.
  - iii) They undertake to maintain impartiality and independence throughout the proceedings, and to avoid any conduct for a reasonable time thereafter that may damage the appearance of impartiality and independence of the dispute resolution panel with respect to the proceedings.

Each panel member shall execute a written certification to the effect of the provisions of this subparagraph. The panel members shall undertake to promptly disclose to both *MAP competent authorities*, in writing, any new facts or circumstances that arise during or subsequent to the panel proceedings that might give rise to doubts with respect to their impartiality or independence.

- g) Before the date on which a request pursuant to Article 35(1) may first be made, the *MAP competent authorities* of the two *covered jurisdictions* shall each nominate five individuals to separate lists of independent experts used to constitute dispute resolution panels pursuant to this Section with respect to the *covered tax agreement*. Except to the extent that the *MAP competent authorities* of the *covered jurisdictions* have mutually agreed on different eligibility

criteria concerning independent experts to be nominated under this paragraph, these independent experts shall be individuals who:

- i) may be relied upon to exercise independent judgment and conduct themselves in a professional manner;
  - ii) have at least six years of experience in dealing with international corporate income tax matters and/or transfer pricing; and
  - iii) do not work for or on behalf of any government and were not in such a situation at any time during the previous twelve months, irrespective of whether the individual is/was on secondment to a regional tax organisation or an *international organisation* during this time (for purposes of this Section, an individual who has accepted an appointment as a member of any other panel provided for under this Convention, or as an arbitrator in a proceeding pursuant to Part VI of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, or pursuant to the provisions of any other bilateral or multilateral agreement or domestic law provision providing for the arbitration or resolution of unresolved issues in a mutual agreement procedure case, will not be considered based on such appointment to work or have worked for or on behalf of any government);
- h) Each *MAP competent authority* shall confirm with each person it nominates pursuant to subparagraph (g) that person's willingness to serve as a member of a dispute resolution panel, including (in cases where the independent expert is neither a national nor resident of either *covered jurisdiction*) whether that person would be willing to serve as Chair. At least one independent expert nominated by each *MAP competent authority* shall not be a national or resident of either *covered jurisdiction* and shall be willing to serve as Chair. Each *MAP competent authority* shall inform the other *MAP competent authority* of the independent experts so nominated. A *MAP competent authority* shall be entitled to object to a person so nominated by the other *MAP competent authority* only where that person does not meet the requirements provided in subparagraph (g) and shall provide a justification with any such objection. Each *MAP competent authority* may change the persons so nominated and shall notify the other *MAP competent authority* without delay when it wishes to do so.
- i) In the event that a *MAP competent authority* has failed to nominate any individuals to that *MAP competent authority's* list of independent experts under subparagraph (g) by the deadline provided in that paragraph, or where none of the individuals nominated by a *MAP competent authority* to its list of independent experts meets the requirements of subparagraph (f) or is otherwise available to act as a member of a dispute resolution panel in a particular case, the group of individuals nominated by the *covered jurisdiction* of that *MAP competent authority* to the *standing pool* comprising independent experts established for purposes of Amount A *determination panels* under this Section shall be deemed to have been nominated by that *MAP competent authority* under subparagraph (f) or (g). Where no individuals have been nominated by the *covered jurisdiction* of that *MAP competent authority* to the *standing pool* or where none of the individuals nominated by a *covered jurisdiction* to this *standing pool* is eligible to act as an independent expert under this Section, all individuals in the *standing pool* under this Annex other than those nominated by the *covered jurisdiction* of the other *MAP competent authority* shall be deemed to have been nominated by that *MAP competent authority* under subparagraph (f) or (g). In circumstances where this subparagraph applies, the references in Article 35 and in this Section to the lists of independent experts provided in subparagraph (g) shall, where relevant, be understood as revised under this subparagraph (i).
- j) The procedures provided in this Section shall apply with the necessary adaptations if for any reason it is necessary to replace a dispute resolution panel member after the dispute resolution panel process has begun. In such circumstances, the *MAP competent authorities*

shall also agree on necessary adaptations, as appropriate, to the deadlines provided in Section 5.

- k) For purposes of this Section:
- i) the term “significant investor” means an individual who, individually or through an Entity owned or controlled by the individual, owns rights to more than 5 per cent of the profits, capital, reserves, or voting rights of any Entity of the Covered Group, or who holds capital having present value, determined on the basis of assets or cash flow, in excess of EUR 50 000 in the Entities of the Covered Group individually or in aggregate;
  - ii) the term “significant business dealings” means a business transaction or a series of transactions that, during any one Period, exceed the lesser of EUR 15 000 or 1 per cent of a Covered Group’s total operating expenses;
  - iii) the term “funded academic position” means academic position directly funded by a Covered Group or a Covered Group’s authorised representatives or advisors. This term shall not include an academic position that is indirectly funded through amounts provided to an educational institution by a Covered Group or its authorised representatives or advisors but not intended to fund the specific position, nor academic positions funded with income generated by a shareholding or another equity interest in the Covered Group held by an educational institution.

#### **Section 4 – Communication of Information and Confidentiality of Dispute Resolution Panel Proceedings**

1. Solely for purposes of the application:
  - a) of the provisions of Article 35; and
  - b) of the provisions of *covered tax agreements*, this Convention, and the domestic laws of the *covered jurisdictions* related to the exchange of information, confidentiality, and administrative assistance,

members of the dispute resolution panel and a maximum of three staff per member (and prospective dispute resolution panel members to be appointed pursuant to Section 3(b)(ii) solely to the extent necessary to verify their ability to fulfil the requirements of dispute resolution panel members) shall be considered to be persons or authorities to whom information may be disclosed under the aforementioned provisions related to the exchange of information, confidentiality and administrative assistance. Information received by the dispute resolution panel or prospective dispute resolution panel members and information that the *MAP competent authorities* receive from the dispute resolution panel shall be considered information that is exchanged under the provisions of the relevant agreement related to the exchange of information and administrative assistance.

2. The *MAP competent authorities* of the *covered jurisdictions* shall ensure that prospective dispute resolution panel members from the list of independent experts nominated under Section 3(g) agree in writing, prior to the disclosure to them of any information relating to the dispute resolution panel proceeding, to treat such information consistently with the confidentiality and nondisclosure obligations described in the provisions of the relevant agreement related to exchange of information and administrative assistance and under the applicable laws of the *covered jurisdictions*. The *MAP competent authorities* of the *covered jurisdictions* shall ensure that members of the dispute resolution panel from the list of independent experts nominated under Section 3(g) and their staff agree in writing, prior to their acting in a dispute resolution panel proceeding, to treat any information relating to the dispute resolution panel proceeding consistently with the confidentiality and nondisclosure obligations described in the provisions of the relevant agreement

related to exchange of information and administrative assistance and under the applicable laws of the *covered jurisdictions*. In the event that a member of a dispute resolution panel or a prospective dispute resolution panel member breaches this agreement, the *MAP competent authorities* shall by mutual agreement determine the consequences of that breach on the dispute resolution panel proceeding, which shall apply in addition to the consequences with respect to the dispute resolution panel member (or prospective dispute resolution panel member) provided under the applicable domestic laws of the *covered jurisdictions*.

3. Prior to the beginning of a dispute resolution panel proceeding, the *MAP competent authorities* of the *covered jurisdictions* shall ensure that the member of a Covered Group that presented the case, any other Entity of the Covered Group directly affected by the case, and their authorised representatives or advisors agree in writing not to disclose to any other person any information received during the course of the dispute resolution panel proceeding from either *MAP competent authority* or the dispute resolution panel other than the determination of the panel where that disclosure is required under the laws of any Jurisdiction. The mutual agreement procedure under the *covered tax agreement*, or under Article 33, as well as the dispute resolution panel proceeding under Article 35, with respect to the case shall terminate if, at any time after a request for a dispute resolution panel has been made and before the dispute resolution panel has delivered its decision to the *MAP competent authorities* of the *covered jurisdictions*, the member of a Covered Group that presented the case, any other Entity of the Covered Group directly affected by the case, or one of its authorised representatives or advisors breaches that agreement. Where such a breach occurs subsequent to the dispute resolution panel's delivery of its decision to the *MAP competent authorities* of the *covered jurisdictions*, the *MAP competent authorities* shall by mutual agreement determine the consequences of the breach with respect to the dispute resolution panel proceeding.

### **Section 5 – Dispute Resolution Panel Process**

Except to the extent that the *MAP competent authorities* of the *covered jurisdictions* mutually agree on different rules, the following rules shall apply with respect to a dispute resolution panel proceeding pursuant to Article 35:

- a) After a case is submitted to a dispute resolution panel, the *MAP competent authority* of each *covered jurisdiction* shall submit to the Chair, within 60 days of the appointment of the Chair, a proposed resolution, not to exceed five pages in total, which addresses all unresolved *related issue(s)* in the case (taking into account all agreements previously reached in that case between the *MAP competent authorities* of the *covered jurisdictions*). The *MAP competent authorities* shall at the same time submit to the Chair portions of the request for mutual agreement procedure submitted by the Covered Group that are relevant to the unresolved *related issues*. The proposed resolution shall be limited to a disposition of specific monetary amounts for each adjustment or similar issue in the case. In a case in which the *MAP competent authorities* of the *covered jurisdictions* have been unable to reach agreement on:
  - i) whether an issue with respect to which the member of a Covered Group presented a case to the *MAP competent authorities* of the *covered jurisdictions* pursuant to the mutual agreement procedure provisions of a *covered tax agreement*, or Article 33 is a *related issue*; or
  - ii) an issue regarding the conditions for application of a provision of a *covered tax agreement*, such as whether a permanent establishment exists,

(hereinafter referred to as “threshold questions”), the *MAP competent authorities* may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such *threshold questions*. The Chair shall provide a copy of the proposed resolutions to both *MAP competent authorities* as soon as possible following the

- date of receipt of the latest of the proposed resolutions. Where the provisions of subparagraph (h) apply, however, the Chair shall provide copies of the proposed resolutions to both *MAP competent authorities* at the end of the seven-day period provided in subparagraph (h), or inform both *MAP competent authorities* at that time if the *MAP competent authority* that was provided additional time to submit a proposed resolution did not do so.
- b) The *MAP competent authority* of each *covered jurisdiction* may also submit to the Chair, by the date on which the proposed resolution is due, a supporting position paper, not to exceed 30 pages plus annexes, for consideration by the dispute resolution panel. The Chair shall provide a copy of the supporting position papers to both *MAP competent authorities* as soon as possible following the date of receipt of the latest of the supporting position papers. Where the provisions of subparagraph (h) apply, however, the Chair shall provide copies of the supporting position papers to both *MAP competent authorities* at the end of the seven-day period provided in subparagraph (h), or inform both *MAP competent authorities* at that time if the *MAP competent authority* that was provided additional time to submit a supporting position paper did not do so.
- c) Each *MAP competent authority* may also submit to the Chair, within 60 days of the date on which the proposed resolution and supporting position paper were due, a reply submission, not to exceed ten pages plus annexes, with respect to the proposed resolution and supporting position paper submitted by the other *MAP competent authority*. The Chair shall provide a copy of any reply submissions to both *MAP competent authorities* as soon as possible following the earlier of the date on which the reply submissions were due and the date of receipt of the latest of the reply submissions. In circumstances where a *MAP competent authority* has not submitted a proposed resolution within the additional seven-day period provided in subparagraph (h), the other *MAP competent authority* shall consider the relevant *MAP competent authority's* position described in the *terms of reference* pursuant to Section 1(2)(a)(iv) as that *MAP competent authority's* proposed resolution for purposes of any reply submission.
- d) Any annex to a supporting position paper or reply submission which does not reflect publicly available information must be a document previously made available for the *MAP competent authorities* of both *covered jurisdictions* to use in discussion of the mutual agreement procedure case. Any factual information used in a supporting position paper or reply submission which does not reflect publicly available information must be contained in a document previously made available for both *MAP competent authorities* to use in discussion of the mutual agreement procedure case.
- e) In the materials submitted by the *MAP competent authority* of a *covered jurisdiction* to a dispute resolution panel, a *MAP competent authority* shall only be permitted to refer to a proposal for resolution previously made by either *MAP competent authority* during discussion of the mutual agreement procedure case if that proposal is submitted to the dispute resolution panel for consideration as a proposed resolution or if that position is described in the *terms of reference* pursuant to Section 1(2)(a)(iv).
- f) Within 60 days after the deadline for the receipt of the proposed resolutions from both *MAP competent authorities*, the dispute resolution panel may ask the *MAP competent authorities* in writing for additional factual information. Any request for additional information shall be addressed by the Chair to both *MAP competent authorities*. Such additional information may be submitted to the dispute resolution panel only at its request. The dispute resolution panel shall establish a deadline for responding to the request. The dispute resolution panel shall not request additional information from the member of a Covered Group that presented the case or any other Entity of that Covered Group.
- i) The dispute resolution panel may only request information that consists of, or is reflected in, existing documentation and may not request additional information not previously available or considered for purposes of the *MAP competent authority*

discussion of the mutual agreement procedure case. The dispute resolution panel may not request new or additional analyses from the *MAP competent authorities*. The *MAP competent authorities* shall consult with each other to determine how to respond to the dispute resolution panel's request and shall mutually agree on the form and content of the response.

- ii) Where the *MAP competent authorities* disagree with respect to the form or content of the response, the *MAP competent authorities* shall, by the deadline established by the dispute resolution panel, provide the Chair with a joint response that reflects items with respect to which the *MAP competent authorities* agree and that identifies those items with respect to which the *MAP competent authorities* disagree. By that deadline, each *MAP competent authority* shall also provide the Chair and the other *MAP competent authority* with a supplementary response that addresses only those items with respect to which the *MAP competent authorities* disagree. These supplementary responses shall not contain any new or additional analyses in support of a *MAP competent authority's* proposed resolution.
- g) The dispute resolution panel shall select as its decision one of the proposed resolutions for the case submitted by the *MAP competent authorities* with respect to each *related issue* and any *threshold questions*, and shall not include a rationale or any other explanation of the decision. The dispute resolution panel decision shall be adopted by a simple majority of the panel members.
- h) In the event that the *MAP competent authority* of a *covered jurisdiction* does not submit a proposed resolution and/or a supporting position paper to the Chair within the time periods provided in subparagraph (a) or (b), the Chair shall notify both *MAP competent authorities*. The *MAP competent authority* that did not submit a proposed resolution and/or a supporting position paper shall be provided seven additional days to submit a proposed resolution and/or a supporting position paper to the Chair. Where the relevant *MAP competent authority* does not submit a proposed resolution within this seven-day period, the dispute resolution panel shall consider the relevant *MAP competent authority's* position described in the *terms of reference* pursuant to Section 1(2)(a)(iv) as that *MAP competent authority's* proposed resolution.
- i) The Chair shall deliver the dispute resolution panel decision in writing to the *MAP competent authorities* of the *covered jurisdictions* within 180 days of the appointment of the Chair. Within 100 days after the receipt of the decision, the *MAP competent authority* of the *covered jurisdiction* of residence of the member of a Covered Group that requested the dispute resolution panel shall communicate in writing to that member of a Covered Group the proposed *MAP competent authority* resolution of the case that reflects the outcome of the dispute resolution panel decision. That member of a Covered Group shall provide written confirmation that it and all other Entities of the Covered Group directly affected by the case accept the proposed *MAP competent authority* resolution within 30 days of such communication. The failure of the member of a Covered Group that requested the dispute resolution panel to indicate the acceptance of the proposed *MAP competent authority* resolution by all Entities of the Covered Group directly affected by the case within 30 days shall be considered a rejection of the proposed *MAP competent authority* resolution.
- j) The dispute resolution panel decision shall have no precedential value. This subparagraph shall apply notwithstanding any *MAP competent authority* agreement that a dispute resolution panel will use an alternative form of decision-making.
- k) In the event that the Chair considers that the dispute resolution panel will be unable to deliver its decision to the *MAP competent authorities* of the *covered jurisdictions* by the deadline provided in subparagraph (i), the Chair shall notify both *MAP competent authorities* as soon as possible, informing them of the reasons for delay. The *MAP competent authorities* may

mutually agree to provide the dispute resolution panel with additional time to reach a decision or to any other appropriate measures to facilitate the panel's decision.

- l) To the extent needed, the dispute resolution panel may propose any additional procedures necessary for the conduct of its business, provided that the procedures are not inconsistent with Article 35 or any other procedural rules agreed between both *MAP competent authorities*. Any such additional procedures shall remain subject to the approval, by mutual agreement, of the *MAP competent authorities*. The Chair shall provide a written copy of any proposed additional procedures to the *MAP competent authorities*.

## **Section 6 – Costs of Dispute Resolution Panel Proceedings**

1. In a dispute resolution panel proceeding under Article 35:

- a) except to the extent that the *MAP competent authorities* of the *covered jurisdictions* mutually agree on different rules:
  - i) each *covered jurisdiction* shall bear the costs related to the participation of its *MAP competent authority* appointed under Section 3(b)(i) in the dispute resolution panel proceedings (including any costs related to the presentation and preparation of its position and any travel costs);
  - ii) each *covered jurisdiction* shall bear the fees and expenses of the members of the dispute resolution panel appointed by that *covered jurisdiction's MAP competent authority* under Section 3(b)(ii), or appointed at random on behalf of that *MAP competent authority* as a result of that *MAP competent authority's* failure to appoint those dispute resolution panel members under Section 3(d)(ii), together with those dispute resolution panel members' travel, telecommunication and secretarial costs, as determined under paragraph 2;
  - iii) the remuneration of the Chair of the dispute resolution panel appointed under Section 3 and the Chair's travel, telecommunication and secretarial costs, as determined under paragraph 2, shall be borne by the *covered jurisdictions* in equal shares;
  - iv) other costs related to any meeting of the dispute resolution panel shall be borne by the *covered jurisdiction* that hosts that meeting or, where that meeting takes place in a third jurisdiction, shall be borne by the *covered jurisdictions* in equal shares; and
  - v) any other costs related to expenses that both *MAP competent authorities* have agreed to incur shall be borne by the *covered jurisdictions* in equal shares;
- b) the *MAP competent authorities* of the *covered jurisdictions* may in particular mutually agree that the member of a Covered Group that requested the dispute resolution panel shall bear the costs related to a dispute resolution panel proceeding in appropriate circumstances, including where:
  - i) a final decision of the courts of one of the *covered jurisdictions* holds that the dispute resolution panel decision is invalid in the circumstances described in Article 35(2)(b)(ii) and that decision is motivated, in whole or in part, by the conduct of an Entity of the Covered Group directly affected by the case; or
  - ii) an Entity of the Covered Group directly affected by the case or one of its authorised representatives or advisors breaches the confidentiality agreement provided in Section 4(3);

- c) notwithstanding subparagraph (a), the member of a Covered Group that requested the dispute resolution panel shall bear costs amounting to half of the sum of the costs indicated in subparagraph (a)(ii) and (iii) or a total amount of EUR 15 000, whichever is lower, where an Entity of the Covered Group directly affected by the case does not accept, or is considered not to accept, the proposed *MAP competent authority* resolution concerning the case that reflects the outcome of the dispute resolution panel decision as under Article 35(2)(b)(i).
2. Unless the *MAP competent authorities* of the *covered jurisdictions* mutually agree on different rules:
- a) The fees of the members of the dispute resolution panel appointed pursuant to Section 3(b)(ii) or (d)(ii) and the Chair shall be set with reference to a schedule of fees to be mutually agreed and periodically updated, as appropriate, by the *MAP competent authorities* of the *covered jurisdictions*. In the absence of such a *MAP competent authority* mutual agreement, such fees shall be set at EUR 1 000 per person per day. Members of the dispute resolution panel appointed pursuant to Section 3(b)(i) shall serve in their official capacity and shall not be entitled to fees in addition to the remuneration they receive as a member of the staff of the relevant *MAP competent authority*.
- b) The expenses of the members of the dispute resolution panel appointed pursuant to Section 3(b)(ii) or (d)(ii) and the Chair shall be reimbursed in accordance with the average of the usual amount reimbursed to members of the staff of the *MAP competent authorities* of the *covered jurisdictions* concerned. Members of the dispute resolution panel appointed pursuant to Section 3(b)(i) shall serve in their official capacity and shall be reimbursed for expenses in accordance with the rules generally applicable to a member of the staff of the relevant *MAP competent authority*.
- c) Each member of the dispute resolution panel appointed pursuant to Section 3(b)(ii) or (d)(ii) and the Chair shall be compensated for no more than three days of preparation, for two meeting days and, if an in-person meeting of the dispute resolution panel is required, for travel days. If the dispute resolution panel considers that it requires additional time to properly consider the case, the Chair shall contact the *MAP competent authorities* to request additional time. The *MAP competent authorities* shall by mutual agreement determine the response to such a request.
3. The *MAP competent authorities* of all *covered jurisdictions* shall mutually agree on an appropriate multilateral framework to fund the costs of Parties that are low-capacity developing countries related to dispute resolution panel proceedings, including under the elective binding dispute resolution panel mechanism provided in Article 36. Such an agreement shall be concluded before the date on which unresolved *related issues* in a mutual agreement procedure case are first eligible to be submitted to a dispute resolution panel under Article 35 or 36 and may be modified from time to time thereafter.



## ANNEX H – REVIEW PROCESS AND EARLY CLARIFICATION ON DIGITAL SERVICES TAXES AND RELEVANT SIMILAR MEASURES

1. A Party (the “requesting Party”) may submit a written request to the Depositary to convene a meeting of the Conference of the Parties in order to determine whether a measure (the “concerned measure”) of a Party (the “enacting Party”) is a *digital services tax or relevant similar measure* as described under Article 39(2). The concerned measure must either be:
  - a) a measure that is in force in or being considered by the enacting Party, if the requesting Party is the enacting Party; or
  - b) a measure that is in force in the enacting Party, if the requesting Party is not the enacting Party.
2. The Depositary shall notify the Parties within one month of receiving a request described in paragraph 1.
3. The Conference of the Parties shall endeavour to reach a decision with respect to the concerned measure within one year from the date on which the Depositary notifies the Parties as described in paragraph 2, following the process and timeline described in paragraphs 4 through 9, unless the Conference of the Parties agrees to a different timeline. The Depositary shall promptly issue a public notice of this decision.
4. Within four months from the date on which the request is notified to the Parties under paragraph 2, the enacting Party shall submit a self-assessment regarding the concerned measure to the Depositary (the “self-assessment”).
5. The Depositary shall convene a meeting of the Conference of the Parties in accordance with paragraph 1 within two months from the date of reception of the self-assessment under paragraph 4.
6. Decisions of the Conference of the Parties under paragraph 1 shall be made by consensus, disregarding for that purpose the enacting Party and, in the case of a measure described in paragraph 1(b), also the requesting Party.
7. If the consensus described in paragraph 6 is not reached, then, if requested by the requesting Party, or, in the case of a measure described in paragraph 1(a), by a Party that considers the concerned measure to be a *digital services tax or relevant similar measure*:
  - a) the Conference of the Parties shall establish an *ad hoc* advisory panel composed as described in paragraph 8 within one month from the date of the meeting of the Conference of the Parties convened under paragraph 5;
  - b) the *ad hoc* advisory panel shall examine the concerned measure and submit an analysis and a recommendation, supported by a simple majority of its members, to the Conference of the Parties for consideration no more than three months after its establishment.
8. The composition of the *ad hoc* advisory panel described in paragraph 7 should ensure adequate geographical representation and adequate representation of various levels of development, and shall include:
  - a) the enacting Party;

- b) in the case of a concerned measure described in paragraph 1(a), a Party that expressed the view, at the meeting convened pursuant to paragraph 1, that the concerned measure is a *digital services tax or relevant similar measure*, or in the case of a concerned measure described in paragraph 1(b), the requesting Party; and
- c) five other members to be designated from among the other Parties and adopted by consensus on the basis of a proposal by the Chair of the Conference of the Parties.

9. Where paragraph 7 applies, within two months from the date on which the *ad hoc* advisory panel submits its analysis and recommendation as described in paragraph 7(b), the Depositary shall convene a meeting of the Conference of the Parties. The recommendation shall be deemed to be adopted at that meeting, unless the opposite determination is adopted by a simple majority of the Parties.

10. Where the Conference of the Parties determines pursuant to paragraph 6 or 9, as applicable, that a concerned measure is a *digital services tax or relevant similar measure* as described in Article 39(2), Article 39(1) applies with respect to the concerned measure:

- a) for any Period that begins on or after the date of the decision by the Conference of the Parties, in the case of:
  - i) a concerned measure that was already in effect on the date indicated in Article 41(1); or
  - ii) a concerned measure that does not, or would not if adopted, enter into effect until at least one year after the date on which the request was received by the Depositary; and
- b) for any relevant Period that begins on or after three calendar years preceding the date of the decision by the Conference of the Parties, in all other cases.

In a case to which subparagraph (b) applies, however, a decision of the Conference of the Parties pursuant to paragraphs 6 through 9 may also include a determination, taking into account the impact of the measure and other relevant facts and circumstances, that Article 39(1) applies with respect to the concerned measure only for Periods that begin on or after the date of the decision by the Conference of the Parties.

When Article 39(1) applies for a Period preceding the date of the decision by the Conference of the Parties, a Party that has provided relief from double taxation in respect of that Period pursuant to Article 13 may recover the relief provided to a *relief entity* in that Party in relation to the proportion of eliminated Amount A Profit.

11. The review process described in paragraphs 1 through 9 will also apply for determining whether a measure imposed by a *subnational entity* of a Party is a *subnational digital services tax or relevant similar measure*.

12. A “subnational entity” means any municipal, regional, or federated state or district of a Party that exercises autonomy in legislating any tax measures for a specified area.

13. A “subnational digital services tax or relevant similar measure” means any tax imposed by a *subnational entity* that:

- a) would meet all of the criteria of Article 39(2) if it were imposed by a Party; and
- b) is not described in Article 39(3).

14. Where the Conference of the Parties decides that a measure imposed by a *subnational entity* is a *subnational digital services tax or relevant similar measure*:

- a) the Party in which the *subnational entity* is located shall submit to the Conference of the Parties within six months from the date that the Conference of the Parties made its determination a report describing in detail its efforts to achieve the removal of the measure; and
- b) the Conference of the Parties shall publish its decision under paragraph 6 or 9 accompanied by the report submitted by the abovementioned Party under subparagraph (a) within one month from the date that the report is received by the Depositary.

## ANNEX I – POINTS ATTRIBUTED TO JURISDICTIONS FOR PURPOSES OF CERTAIN PROVISIONS

For purposes of Article 43 (Review Process to Lower the Adjusted Revenues Threshold), Article 48 (Entry into Force) and Article 51 (Termination), the Jurisdictions listed below are assigned the following number of points:

**Table 2. Annex I – Points Attributed to Jurisdictions for Purposes of Certain Provisions**

Jurisdiction	Points
Belgium	9
Canada	6
China (People's Republic of)	94
Denmark	4
France	56
Germany	45
Hong Kong (China)	88
India	15
Ireland	21
Japan	47
Korea	11
Mexico	2
Netherlands	15
Saudi Arabia	2
Spain	15
Switzerland	34
United Kingdom	49
United States	486
Other Jurisdictions	0