



Organisation for Economic Cooperation and Development (OECD)  
Centre for Tax Policy and Administration  
Tax Treaties, Transfer Pricing and Financial Transactions Division

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Berne, April 20, 2022

**SwissHoldings comments on public consultation document: Pillar One – Amount A: Draft Model Rules for Domestic Legislation on Scope**

Dear Madam/Sir

The business federation SwissHoldings represents the interests of 61 Swiss-based multinational enterprises from the manufacturing and service sectors (excluding the financial sector).

SwissHoldings would like to thank the OECD for the opportunity to comment on the Draft Model Rules for Scope related to Amount A under Pillar One (“Model Rules for Scope”).

We have the following comments:

- The Model Rules for Scope define Pre-Tax Profit Margin as defined in the Model Rules for tax base determination. Therefore, please refer to our comments made to the Model Rules for tax base determination and submitted to the OECD on March 4, 2022: Exceptional and one-off items, whether generating a profit or a loss at group level, that have no connection to the ordinary course of the business, such as divestures and asset impairments as well as revaluations, should be excluded from the profit determination. Taking into account such one-off events would distort the scoping for the application of Amount A and would artificially bring such MNEs into scope which cannot be considered as “highly profitable” because the profit resulting from the ordinary course of Groups’ business may substantially be below the threshold.
- According to the Model Rules Amount A shall only apply to “highly profitable” Groups. It is of course very subjective what can be considered as “highly profitable”. From our perspective, considering various industries and benchmarks (also those used for transfer pricing



purposes) 10% Pre-Tax Profit Margin cannot be considered as “highly profitable”. It should be considered to further increase the required profit margin.

- We support that the rules to the prior period test and the average test are consistently applied also to Total Revenues. This would limit uncertainty for Groups or segments of Groups with Total Revenues slightly above or below 20 BUSD.
- We support that the rules to the prior period test and the average test are applied permanently on a rolling basis. It should be considered to extend the four-year period to further balance out years with outliers and to address the need of long cycling businesses. As such, existing periods for loss carry-forward should be applied and rules concerning profit-shortfall should be re-introduced.
- In case of acquisitions and divestments, financial data should be used as is and should not require any restatement. Tracking financial data specifically for acquired or divested businesses over multiple years is typically not possible.
- While we take note of that the Exclusions for Extractive Activities and Regulated Financial Services will only be made available later, we kindly refer to and emphasize the definition already made in Note 26 of the Blueprint (Report on the Pillar One Blueprint, page 49), where Extraction is defined as “....extraction from the earth’s crust...”.
- In addition to the named exclusions we continue to support the re-introduction of the domestic business exclusion. We continue to find the exclusion entirely logical considering the overall objectives of Pillar One and the way in which some MNEs in scope operate, e.g. decentralized business models.
- Respectfully, we find that the introduction of the so-called anti-fragmentation rule illustrates a certain lack of understanding of the ordinary course of business for MNEs in scope.
- Regarding exceptional scope rules for determining when a disclosed segment is in scope of Amount A it will be very important to carefully define “segments” to ensure consistency. The content of segments of published segments in Groups’ financial statements are often changing on a yearly basis, e.g., certain products may be moved from one segment to another because of a change in the management organization. It should also be noted that segments often do not include all costs required to operate a segment resulting into the need for certain allocations. Consequently, we would encourage that the principles applied for segmentation are not more stringent that would otherwise apply to the disclosure in audited financial statements.
- We would welcome the inclusion of a catalogue of numerical examples in the later issued documents so as to provide guidance on the interpretation and application of the Model Rules for Scope.

- Finally, we want to keep mentioning - despite of the political agreement - that from our perspective the scope of Amount A should focus on businesses which were the primary reason for the implementation of Amount A, which are businesses operating in the digital economy. As already mentioned in previous comment letters, Amount A will now impact many Groups that operate in market jurisdictions with a legal entity or branch and already pay a fair share of taxes in such jurisdictions. For such Groups, the implementation of Amount A will result in a very significant compliance burden with limited re-allocation of profit.

### **Reservation**

As the consultation on Pillar One components happens according to a rushed and staggered approach, we reserve the right to revert with further comments on the Tax Base Determinations Rules once all components and the related commentaries are published.

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We kindly ask you to take our comments and proposals into due consideration.

Yours sincerely,

### **SwissHoldings**

Federation of Industrial and Service Groups in Switzerland

A handwritten signature in black ink, appearing to be "G. Rumo".

Dr. Gabriel Rumo  
Director

A handwritten signature in black ink, appearing to be "M. Hess".

Martin Hess  
Senior Policy Manager Taxation,  
Certified Tax Expert

Cc:

- SwissHoldings Transfer Pricing Subgroup