



ICC comments in response to OECD public consultation document on Draft Rules for Scope Under Amount A of Pillar One

The International Chamber of Commerce (ICC), as the world business organization speaking with authority on behalf of enterprises from all sectors in every part of the world, appreciates the opportunity to provide input on the OECD [public consultation document](#) on Draft Model Rules for Domestic Legislation on Scope Under Amount A of Pillar One. ICC advocates for a consistent global tax system, founded on the premise that stability, certainty and consistency in global tax principles are essential for business and will foster cross-border trade and investment. ICC is also an established arbitral institution through its International Court of Arbitration and provides other dispute resolution mechanisms through its International Centre for Alternative Dispute Resolution.

ICC appreciates the work undertaken to date on the Model Rules to determine when a Group will be in scope of Amount A and subject to the detailed provisions contained within the Model Rules. ICC recognises that the rules are designed to ensure Amount A only applies to large and highly profitable groups and have been drafted to apply in a quantitative manner, such that they are readily administrable and provide some certainty as to whether a taxpayer is within scope.

In this regard, ICC welcomes the opportunity to provide further input to assist the Inclusive Framework in further refining and finalising the relevant rules and providing any additional guidance.

To this end, ICC is pleased to provide the following comments:

General comments:

ICC members would welcome further measures with respect to providing certainty as to whether a taxpayer is in scope, through the use of the dispute prevention and resolution framework previously set out in the Pillar One Blueprint which establishes a review panel. The framework should include guidance on the resolution of disputes in relation to the scope of Amount A so as to avoid double taxation in the event of a tax dispute. A multilateral binding dispute resolution mechanism remains critical to eliminate double taxation.

Specific comments:

1. Title 2, Art 1: Covered Group (page 5) explains when a Group is a “Covered Group” for a Period.

ICC notes that terminology used in the covered group definition includes the word “global”, which implies a larger scope than a group. According to this definition, a group could be a business unit, or a group of entities that are part of a consolidation and could be part of a larger multinational entity.

ICC also notes that the use of the terms ‘merger’ and ‘demerger’ appears to be confusing as this is no longer an accounting concept.

ICC members recommend aligning terminology across the Pillar One and Pillar Two documents to enhance consistency and understanding. For instance, Group entity vs Constituent Entity, etc.

2. Title 2, Art 1: Covered Group (page 5) further elaborates on global revenue test, which indicates a Group is a “Covered Group” for a Period where both sub-paragraphs (a) and (b) are met:
 - a. The Total Revenues of the Group for the Period are greater than EUR 20 billion. Where the Period is shorter or longer than twelve months, the EUR 20 billion amount is adjusted proportionally to correspond with the length of the Period.

ICC members note that it seems unclear which exchange rate to use to assess the thresholds. Is it an average or a point in time? Will this be left to jurisdictions?

ICC recommends clarifying the mechanism to calculate the numeric threshold in the global revenue test.

3. Footnote 3, Art 1 (page 5) discusses whether the Total Revenues of a Group should be subject to equivalent rules (similar to the tests applicable to profitability).

ICC members support that **Total Revenues** of a Group be subject to **equivalent rules** (similar to the tests applicable to profitability).

4. Art 1, Para 2 (page 5), defines a Group will be in scope of Amount A where it meets two thresholds (the global revenue test and the profitability test). ICC members respectfully suggest the additional following points:
 - To also apply the de minimis foreign in-scope revenue test as the third threshold, following the Pillar One Blueprint, which would exclude MNE groups with de minimis foreign in-scope revenue, to simplify the application of Amount A on a reasonable basis where the majority of profits will be allocated to/from the same jurisdiction.
 - To clarify the rules for the adoption of the exchange rate when calculating the global revenue.
 - To apply the prior period test and the average test solely as an “entry test”, to simplify the application of the profitability test, while providing a cycle to initiate/conduct exceptional case review, (of the prior period test and the average test) where certain parameters are met.
5. Footnote 5, Art 1 (page 5) states an ongoing discussion on whether the prior period test and the average test should be a permanent feature of the scope rules or, alternatively, apply as an “entry test” only.

ICC recommends that both the prior period test and the average test should be a **permanent feature**.

6. Art 1, Para 5 (page 6) defines the applicable conditions of the anti-fragmentation rule (in the case of Internal Fragmentation).

According to footnote 8, the anti-fragmentation rule only applies to the UPE of a Group that is controlled by an Excluded Entity, Investment Fund or Real Estate Investment Vehicle. ICC members suggest expanding the restriction on the nature of UPE to apply the anti-fragmentation rule to more types of UPE.

With regard to Paragraph 5(c), ICC members further suggest clarifying and refining the purpose test by following the principle that the purpose of an internal fragmentation is justified if taxpayers are able to prove that they have sufficient/reasonable commercial reasons and evidence to do so, as opposed to setting rules where they would need to prove that failing the global revenue test is one of the principal purposes of the internal fragmentation.

7. Para 6, Art 1 (page 7) contains a placeholder intended to provide the exceptional scope rules for determining when a disclosed segment reported in a Group's Consolidated Financial Statements is in scope of Amount A.

The placeholder suggests that a reported business segment in a Group's consolidated financial statements could be in scope of Amount A, where a disclosed segment meets the global revenue test and profitability test in paragraph 2. Such segments may not prepare a stand-alone consolidated financial statement under the qualifying financial accounting standards, as on many occasions this is not a full line by line disclosure and is segmented by divisions rather than a group of entities. Information is disclosed as an aggregation of total numbers by segment.

In this regard, ICC recommends that the requirements in respect of any disclosed segment should not be any more onerous than those required to be disclosed in the audited financial statements under IFRS 8 or its equivalent in other acceptable GAAPs.

ICC members also express concern that the question may arise as to whether the prior period test and the average test should also apply in respect of a disclosed segment.

ICC members therefore recommend that the prior period test and the average test should also apply in respect of the exceptional scope rules for determining when a disclosed segment is in scope of Amount A (art. 2 para 6)

8. Title 9 -Definitions (page 7) provides further detail on "Consolidated Financial Statements and related definitions".

This includes the definition of “Total Revenues” (page 10) meaning the items of income included in Total Revenues determined by the applicable Qualifying Financial Account Standard, subject to the specific adjustments provided. The first adjustment mentioned cross references to Article 5(2)(a)(iii) (Equity Gain or Loss).

In line with previous recommendations related to “tax base determination” ICC recommends that the tax base should be adjusted to remove distorting effect of one-off items such as the gain or loss that can arise in the disposition of a business, whether in the form of the sale of equity interests or in the form of the sale of assets”.

9. Para d) of the Total Revenues definition (page 10), requires adjusting the proportionate share of revenues from a joint venture, where, under qualified financial accounting standards would have not been recognised, but instead an equity method profit or loss would have been reflected in the P&L. Joint ventures are not a controlling interest, and therefore the group would not have control over the revenues.

ICC members recommend including further **clarification** on why revenues from a joint venture should be taken into consideration for the global revenue test that is coherent with the group entity and the UPE definitions.

10. Other definitions - “Acquiring group” (page 11)
There is no consideration of materiality in the acquired information with respect to whether or not it is reasonable/possible to obtain information that is in line with the group accounting policies under qualifying financial accounting standards. ICC members note that it could be an administrative burden to recalculate prior year information to calculate the average of the global profit test when an acquisition occurs.

ICC therefore recommends including a materiality consideration in this regard.

11. Profits- Amount A Tax base.
The profit and loss statement also relates to consolidated subsidiaries where the Covered Group owns an interest less than 100%.

ICC members would welcome a clarification on how to take minority shares into account - e.g., allocable profits?

ICC remains committed to providing knowledge and expertise on behalf of the global business community.

ABOUT THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 100 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.