ICC comments in response to OECD public consultation document: Progress Report on Amount A 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 the Progress Report on Amount A 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 work undertaken to develop a comprehensive set of technical rules of the new taxing right (Amount A) for market jurisdictions established under Pillar One. It is encouraging to note that some of the recommendations made by the business community in previous responses to public consultations have been integrated in the current OECD Progress Report. Nonetheless, there are still significant concerns that need to be addressed.

In this regard, ICC welcomes the opportunity to provide input with respect to the Progress Report on Amount A Pillar One.

To this end, ICC provides the following comments:

General comments:

- While the business community has welcomed the inclusion of some of their suggestions in the progress report, ICC members express strong concern regarding the **level of complexity (with the associated dispute risks) and the administrative burden** placed on both MNEs and tax administrations, which, in some instances, may be disproportionate with the policy intent.
- ICC members welcome and await the proposed streamlined administrative process and innovative tax certainty framework (workable for tax administrations and taxpayers alike) that are planned to be released before the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) meeting in October.
- Acknowledging that, as reported in the progress report, the administrability and tax certainty aspects will be addressed in a following public consultation, ICC members would like to reiterate the **central role that both the administrability and tax certainty aspects** will play in ensuring that the new rules are workable.
- **ICC members believe that further clarity is needed**. At present, the business community advocates for further guidance and clarity which is necessary to set up models and develop reporting systems. Revenue sourcing, which is foundational to Pillar One, needs further clarification in order to be included in a Pillar One model. Any attempt to set up a model - under the current version of the rules as contained in the progress report - may be significantly flawed due to the complexity and lack of administrability of these, at the present stage.
- Although the business community recognises that steps in introducing tax certainty mechanisms will be taken in the upcoming months, the rules on Amount A would still require MNEs to develop their own IT systems to comply. Similarly, revenue agencies will also need to invest in similar IT infrastructures in order to review these. For this reason, ICC members respectfully invite the Task Force on the Digital

Economy (TFDE) to **assess whether the administrative burden placed on MNEs vis-à-vis tax authorities is effectively consistent with the initial policy intent underlying Amount A.**

- Whilst ICC members welcome the principle of a "safe harbour" to provide a relief to the Amount A allocation when most of the residual profit is already taxed in the market country, in their opinion it is important to recognize that the Marketing and Distribution Safe Harbour - as contemplated in the progress report - **does not operate efficiently in all situations**. In particular and based on initial modelling carried out by some of the ICC members, where a group operates under a **decentralized, local business model with entrepreneur entities acting on their local market**, **the application of the rules will lead to significant "market country to market country" Amount A allocations, which is not consistent with the policy intent of Amount A and the simplification purpose of the Marketing and Distribution Safe Harbor (MDSH)**. Therefore, some ICC members are suggesting another test based on objective and auditable facts pattern in order to avoid any Amount A allocation in these circumstances (see below).
- The proposed MDSH currently fails to eliminate double counting and double taxation by using the Return on Deprecation and Payroll (RODP) threshold rather than all costs in a jurisdiction. The MDSH is further limited by requiring the higher of RODP or an unexplained and unprincipled 40% RODP, and by including an amount "Y" set at anything less than 100%. In addition, the proposed multiplier to reduce elimination profits may merely alter possible tiering without eliminating Amount A.
- ICC members also strongly believe that **no percentage offset (the "Y%") should apply to the MDSH relief**, otherwise it will lead to double counting of the same residual profit in the market countries which is not the policy intent. For the same reason, **there should be no de minimis rule for the MDSH to apply**.
- Moreover, the late insertion of a tiered ranking of Relieving Jurisdictions based on an antiquated RODP formula adds **unnecessary complexity** when a straightforward proportional allocation would have sufficed. More fundamentally, **the RoDP formulation deviates from the original policy intent of Pillar 1** to address tax challenges arising from the digital models which generate profits without a taxable physical presence, whose very foundation is based on intangibles.
- As stated in the progress report, the Multi-Lateral Convention (MLC) will include provisions requiring the withdrawal of all existing digital service taxes (DSTs) and similar measures with respect to all companies which will be listed. The business community emphasises **the importance of withdrawing unilateral measures and discourages the implementation of withholding taxes and DSTs** on top of Amount A.
- The business community urges a robust global consensus so that the MLC can include as many jurisdictions as possible. Some of the ICC members believe that simplifying Amount A by replacing the RoDP tiers with straight forward and equitable proportional allocation will better support MLC negotiations, given the divisive preference of the RoDP tiering for certain Inclusive Framework members over others (see comments on Title 5 and Schedule E below).
- Currently, the issue related to the possible proliferation of withholding taxes (WHT) resulting in double taxation has not yet been sufficiently addressed. ICC members understand that the treatment of WHT will be subject to a separate consultation. Nevertheless, ICC members underscore that WHT will need to be taken into account to measure the level of profit that has already been taxed in the country. If WHT are not considered, then countries would merely add WHT in addition to Amount A which would negate the purpose of Amount A.
- Throughout its rules, the progress report uses a number of **data points** taken from the financial statements. To reduce complexity, ICC members suggest **clarifying that there is no requirement to disaggregate a single service invoice received to identify separate components**. For instance, in the case where a service provider charge includes an element of labour/fixed assets, there would be no requirement to identify labour/fixed asset components of service costs.
- In several points, the Progress Report uses the phrase “ordinary operating activities”. However, ICC members would like to highlight that the chosen phrase **“ordinary operating activities” is not defined in IFRS GAAP or elsewhere in the Pillar One proposals**. Consequently, ICC members would recommend either using terms that are defined in IFRS GAAP or clarifying that this phrase does not refer to any financial statements term, and thus, guidance on its meaning should be provided.
- The business community would also welcome clarity on the determination of the non-extractives profitability for the Transition phase (see comments on Schedule B).

- ICC members also consider positive that the report states that Amount A has no implications for the determination of any other direct or indirect tax, customs duty, or social security contribution in the jurisdiction of any group entity of the same covered group (Title 2, p.13 (2) Progress Report).

Specific comments:

A. *Nexus and Revenue Sourcing Rules*

Title 3

- **Article 4** covering the Revenue sourcing rules **still presents some elements requiring further clarity**. In particular:
  Paragraph 2 *"Revenue must be sourced in a manner that accounts for differences among Jurisdictions in the goods, content, property, products, and services sold."*
  ICC members believe that it would be advisable to provide **further insights on how to interpret it.**
- Similarly, **ambiguities** arise from the lack of definitions on what constitutes **finished goods and components**. Given the different legal value that the Commentary on Amount A will have based on the single jurisdictions with the aim of preventing unnecessary disputes, **ICC members recommend the inclusion of these two definitions in the text of the MLC for Pillar One** instead of the Commentary.
- The business community welcomes the inclusion of the **predominant character** criterium to source revenues falling under more than one category. At the same time, in order to reduce potential disputes, **ICC members respectfully suggest including a presumption in favour of the taxpayer to reduce disputes.**
- According to **article 4 (4)**, in applying the revenue sourcing rules, the Covered Group must source all revenues. This provision is considered by ICC members as **too burdensome**, and **changes would be welcomed**.
- In the view of ICC members, Amount A should focus on customer revenue and **non-customer revenues should be excluded from the calculation** rather than being allocated to jurisdictions on a proportionate basis.
- Furthermore, under article 4.9, it is unclear how the revenue sourcing rules would be applicable in relation to the **receipt of development milestone payments or in the case of income associated with the sale of IP or products not yet available on the market**. According to the view of ICC members, in all these cases, at the moment when the payment takes place, it would be too difficult to determine where is the place of delivery to the final customer for any future product sale that is going to take place. This is especially true for industries with long lifecycles. Moreover, in the case of Research & Development (R&D), these activities may fail; in such cases, there would be no identifiable final customer. Due to the complexity of the rules and the additional challenges emerging in these specific cases, ICC members respectfully suggest excluding development-based milestones from Amount A. Conversely, if they are to be ultimately included, they would welcome further clarification.
- The business community warmly welcomes the introduction of an **"Initial Revenue Sourcing Transition Phase"**. As stated in the report, this transition phase is restricted to the first three years after the entry into force of the MLC. However, ICC members doubt that this time frame would be sufficient to fully ensure a smooth transition in all cases, particularly if various allocation keys (based on the characterisation) that may not have any correlation to the business will need to be applied. Therefore, ICC members **recommend extending this transition phase (in addition to a soft landing)** to a period between 4-7 years for current and future companies in scope of Amount A.
- Moreover, while the bright-line EUR 40 billion GDP threshold allows easy assessment and application of the nexus test, this mechanism can be further refined to account for currency fluctuations (particularly relevant for developing countries) and variations at the threshold of GDP levels. In this regard, some ICC members suggest a "look-back" period of 1 year or more or an averaging formula applying to average GDP in the past 3 years. This could help to mitigate such fluctuations, and qualify developing jurisdictions to apply the lower nexus threshold of EUR 250,00 for another year to give time for adjustment. To illustrate,

Year	GDP (EUR)	Proposed nexus threshold to apply (EUR)	Comments
1	39 billion	250,000	Per existing mechanism
2	41 billion	250,000	Look-back period of [1] year whereby the EUR 250,000 threshold shall apply for [1] more year
3	41 billion	1,000,000	Look-back period ends and new higher threshold applies

In similar vein, the look-back should apply *pari passu* in the reverse situation whereby GDP falls below EUR 40 billion so as to give time to both market and Relieving jurisdictions to adjust.

Schedule E

Additional clarity is also needed in relation to the detailed revenue sourcing rules contained in Schedule E. In particular:

- Pursuing the goal of minimising possible future controversy, ICC members request further **clarity in the definition of "indicator"** (p. 64, section 2, par. 3 (b) (i) Progress Report) whose aim is to provide flexibility for the taxpayer.
- Similarly, for the definition of "**Alternative Reliable Indicator"**, ICC members note that it is fundamental to **further clarify the meaning of the term "consistent"** as used in p. 65, section 2, par. 5 (b) Progress Report.
- Consistent with the rule included in the progress report on **revenues from finished goods sold to a final customer through an independent distributor**, it derives that the revenues are sourced to the place of final delivery to the customer. However, ICC members believe that this **first approach would be unworkable** (e.g. in the EU where there is the possibility of parallel trade). Thus, the second part of the rule would become applicable and consequently, they would be sourced to the location of the independent distributor, provided that it is contractually restricted to selling in that location or that it is otherwise reasonable to conclude that it is located in the same jurisdiction as the place of the delivery of the finished goods to the final customer. Nonetheless, in this second scenario, businesses **wonder whether it would be expected by policymakers that taxpayers should include geographic limitations in contracts with distributors, with the unintended consequence that this might stifle commercial activities and require renegotiation of contracts**. On this note, it should be noticed that such a requirement would be very onerous for businesses, since it would entail monitoring on an annual basis an incredibly high amount of arrangements with independent distributors in order to ensure that they continue to meet the definition in Schedule E.
- Furthermore, in the case of sourcing rules for revenues from finished goods sold to a final customer through an independent distributor, **complexities** arise due to the possibility of **various allocation keys** being used and an **85%-5% approach** for revenues associated with the particular independent distributors that remain unsourced in excess of the 5% limit.
- Regarding the concept of **"Digital Content"**, ICC members note that it should be further **clarified** that **cloud services** would fall under the definition of "**other services".**
- As drafted, **the rule for components** is still considered to be **overly complex and unworkable**.
- For "other services" the possibility of referring to the billing address for "smaller customers" has been well received by the business community.
- The **large number of different allocation keys (11)** included in the definition provided on p. 75 of the progress report is **confusing and overcomplex**.
- Inconsistency and ambiguity also emerge in relation to the definition of **"reasonable steps"** which do not include changing contractual terms. The document should **clearly state that taxpayers are not required to renegotiate contracts to comply**.
- ICC members would like to emphasize the **lack of clarity** surrounding the definition of **"large customer"**. At present, it is unclear whether it is limited to "customers" or could also relate to resellers and

distributors with a global tax base. Similarly, clarifications would be very welcome in relation to the meaning of **“business customer” used in the definition of “reseller”**. In particular, the application of the rules is vague for the case in which a reseller would be acquiring services as partial input.

- **To determine "large customer" status**, we believe **account level testing should suffice**. Revenue from separate customer accounts which are not linked in a taxpayer's system should not be required to be combined.
- Moreover, simplification of the revenue sources rules would be welcomed by businesses as necessary also to address challenges that arise at regional level. For instance, such in the case of EU parallel trade. As a possible solution, some ICC members suggest treating sales made by a subsidiary with a physical presence in a particular jurisdiction as arising in the jurisdiction where these are located in.
- Finally, ICC member also respectfully encourage reconsidering the overall nexus test values. It is still unclear whether at the very lower end, the tax will be largely outweighed by compliance obligations on both sides.

B. Determination and Allocation of Taxable Profit

I. Asset Gain (Or Loss) Spreading Adjustments

- The Progress report introduces the “Asset Gain (or Loss) Spreading Adjustments” i.e. book-to-tax adjustments required to ensure that the gain (or loss) recognised upon the sale of an asset such that this gain (or loss) is allocated evenly between the Period in which the gain (or loss) arises and the four subsequent Periods.
- **Special attention** is likely needed in relation to **pre-implementation gains related to asset deals** (i.e. gains incurred prior to the introduction of Amount A). Any carry-forward regime that would also cover this period could potentially bring these pre-implementation gains within the scope of Pillar One for the years 2024 and following.
- In this respect, **ICC members recommend clarifying that pre-implementation gains related to asset deals** (i.e. gains incurred prior to the introduction of Amount A) **are excluded or made optional**.

II. Marketing and Distribution Safe Harbor (MDSH)

- In relation to the marketing and distribution safe harbor (MDSH), the MDSH calculation performed on a jurisdictional basis was well received by the business community. However, there are some aspects that need to be improved in order to achieve greater certainty, avoid double counting and double taxation and lower the excessive burden on companies.
- Firstly, ICC members **recommend the absence of any de minimis rule for accessing the MDSH.** Otherwise, decentralised groups whose business models foresee that the vast majority of the residual profit is already in the market jurisdictions will incur the risk of having their residual profits double counted.
- For the same reason, ICC members strongly urge the TFDE to **allow full relief of the MDSH in each jurisdiction**. This would be **more closely aligned to the policy intent of Pillar One**, which was not intended to discount the amount of residual profit already in the market countries. Furthermore, it is difficult to envisage any sound economic rationale for not granting the relief.
- In its current version, **the MDSH results in double counting** due to the fact that it does not take into account withholding taxes**, opening the door to the possibility that market jurisdictions will levy withholding taxes on outbound payments that contribute to residual profits.**
- As possible solutions, some ICC members suggest using **an offset mechanism that adjusts the return of the local entity by an amount calculated to set the withholding tax collected to an equivalent amount of profit taxed at the full corporate income tax rate**. In this way, this deemed withholding tax profit could then be added to the existing local country return and that adjusted local country return could consequently be used in the MDSH calculation.
- A second suggestion would be to **limit the withholding tax considered to the withholding tax collected on outbound payments that contribute to residual profit to reduce double counting.**

- Additionally, as it currently stands, the MDSH does not consider groups whose business model is essentially local, where entrepreneurs act on a local market and produce locally, and therefore all routine and residual profit is in one country. **For decentralised, locally operating MNEs, applying a homogenous profitability test across the jurisdictions is bound to result in unintended consequences** in light of the policy motivations for Amount A. For example, there is a real risk that residual profits will get taxed twice in the same jurisdiction and then relieved via an adjustment to a country with which there is no connection in relation to those trading activities. Moreover, the **administrative burden** which will be placed on these MNEs, given the complexity of the rules, will **not be consistent with the policy intent** of Amount A.
- To overcome these issues, ICC members respectfully **suggest having a group entry test** through a **new point 2bis to Article 6** which could be drafted as follows:

  "Where a Covered group meets the cumulative conditions below, no allocation of profit shall apply to any of the jurisdictions in which the group operates [the percentages are only suggestions and could be subject to discussions]:

  - Intercompany cross-border transactions do not represent more than [20%] of the Covered Group's consolidated revenues;

  - In each jurisdiction, more than [85%] of the external sales of the entities of the Covered Group take place with End consumers based in the jurisdiction, based on products and services which are manufactured in the same jurisdiction;

  - The cross-border licensing of Intellectual Property Rights within the Covered Group does not preclude the application of the present provisions. [Additional safeguards could be foreseen with this respect, for instance applying a cap on the amount of cross-border royalties based on a percentage of the group's consolidated revenues]

  As these **criteria are objective**, they have the advantage of **being easily audited**. Additionally, the MNEs could provide evidence that they meet the conditions as part of the Advance Certainty process. As an alternative or addition to the MDSH, a **local business exception** to address the situation of groups with a similar business model was **already contemplated in the October 2020 blueprint** and, in the view of ICC members, remains a valid measure.

- Finally, ICC members consider that the **presence of a haircut on the MDSH should also be eliminated**. At the moment, the MDSH is haircut due to Amount Y, inclusion of "the higher of" PEP calculation, and by focusing on the calculation on Return on Depreciation and Payroll of the Covered Group or 40 %, implies that the MDHS will be drafted in such a manner that will result is **double counting/double taxation**. Thereby not achieving the stated aim of the MDSH which was to reduce or eliminate Amount A where the market country already had taxing rights over residual profit. Moreover, there is also no principled justification for an Amount Y that is less than 100%. Hence, ICC members **strongly oppose including Amount Y at anything less than 100%, the use of the "higher of" calculation, and using outdated notions of depreciation and payroll**. At the very least, the business community **recommends** the proposal to **incorporate the amortisation of IP and acquired IP**.

C. Elimination of Double Taxation with Respect to Amount A

<u>Title 5</u>

- **Additional burden** and **unneeded complexity** also derive from the **requirement to include each Jurisdiction** with respect to which **Elimination Profit**, as defined in Schedule I (Elimination tax base), is **equal to or greater than EUR 50 million for the period.**

- Whilst acknowledging the ongoing work by the TFDE, the draft rules under article 9 use a waterfall approach to determine the "paying entity" for Amount A based on the tiering of group entities in accordance with its return on depreciation and payroll. Thus, ICC members would like to note that this approach is unlikely to provide an appropriate economic outcome as the "paying entity" may be located in a jurisdiction with no direct connection with the underlying IP to the finished goods sold. ICC members believe that the **elimination calculation** will also be **challenging to scale and administer.**
- Differently from the case of M&A as in the document, the **"Return on Depreciation and Payroll" (RODP)** does **not** provide **sufficient clarity** in identifying whether the financial statement or tax definition is used for payroll. Hence, the business community suggests **additional clarification**.
- The business community is concerned that the tiered approach based on the **"Return on Depreciation and Payroll" (RODP)** will take Pillar 1 away from its original policy intent of addressing the taxation of the digital economy by ignoring intangibles. The complex tiering RODP waterfall would also result in ICC members having to deal with more controversy. For instance, relative to simple proportionate allocation, the RoDP waterfall allocation is more prone to errors, with higher tier jurisdictions more likely to challenge allocations with such disputes cascading and leading to uncertainty as to lower tier allocations.
- In the event RODP is adopted, ICC members **recommend at least the inclusion of returns to IP and IP amortisation** in the **RODP calculation**. A different solution would in fact disadvantage businesses investing in R&D and that have knowledge intensive business models when Amount A delineates residual profits at 10%, regardless of how such profits are generated.
- At present, there is **not enough information on the exemption or credit method** referred to in Article 10 (2). Consequently, an assessment of the relative implications can only be effected subsequent to the publication of more details on how the methods are going to be applied. In general, ICC members strongly support the exemption method to ensure elimination of double taxation.
- Additionally, ICC members would welcome **clarification** concerning the **identification of group entities of a covered group** entitled to elimination of double taxation with respect to Amount A.

<u>Schedule E</u>

- As for the rules contained in title 5, ICC members note that there is a **lack of clarity** in this schedule. The **rules are extremely complex** and will require significant **investments in IT tools and resources**, without any possibility of applying simplification measures contrary to the Safe Harbors contemplated for Pillar Two.
- The rules do **not** appear consistent with **Pillar Two Globe Income/Loss computation rules**. Consequently, a new set of tax books would need to be maintained in each country, in addition to the statutory accounts, the consolidated accounts, the local tax books, and the GloBE tax books.
- Among the inconsistencies:

(1) Most of the **adjustments** that are contemplated are **mandatory**, whereas they are **optional** under GloBE rules (e.g. Stock-Based compensation adjustment);

(2) Other adjustments which exist in Pillar Two are **missing** (e.g. **FX adjustment** when the **functional currency** is different in local tax books and consolidated accounts);

(3) Also, **intercompany transactions** within the same jurisdiction must comply with the arm's length principle, whereas **in GloBE rules, an election can be made** to treat all the entities within the same territory as one, provided that a tax consolidation mechanism exists in the jurisdiction;

(4) The rules included in the progress report also provide for a **mandatory Elimination Loss carry-forward mechanism**, whereas in **Pillar Two,** the use of a GloBE loss carry-forward is only **an election**;

(5) ICC members also recommend **considering the possible issues arising within the Pillar One elimination of double taxation rules when designing the relevant Pillar Two safe harbors.**

(6) ICC members **encourage clarification on the (potential) interactions between the elimination of double taxation mechanism under Pillar One and top-up tax under Pillar Two**. In particular, it would be helpful to provide further guidance on the **interplay between the top-up tax** (for instance, under Qualified Domestic Minimum Top-up Tax (QDMTT) or similar measures) and the **elimination of double taxation under Amount A** (and the potential impact on the top-up tax).

D. Definitions

In relation to Title 7, the business community underscores **major accounting concerns** as well as lack of **clarity** regarding the definitions of the numerous new concepts introduced by the new rules. The most significant issues relate in particular to the following aspects:

I. Acquired Equity Basis Book-To-Tax Adjustment

- **Title 7 does not foresee any revaluation for PPE or Intangibles, or leased assets for acquisitions**. Business acquisitions are commonly accounted for using the purchase method, and revaluation is a key component to measure the value of the transaction. Thus, the fair value of the assets and liabilities acquired is a better reflection of the cost of the assets to the Group shareholders and therefore, the amounts on which depreciation should be based or - for financial assets - the effective interest earned or paid. For this reason, the **generally accepted treatment for business combinations is a better reflection of the economic outcome of the acquisition.**
- Furthermore, in the context of **acquired equity basis book-to-tax adjustment**, the **requirement** creates a need for an **additional consolidation based on predecessor values.** This **condition** is quite **onerous**, particularly for businesses that have hived up or where pushdown accounting has been applied, thus creating an additional burden for many companies to track and recalculate based on historic costs which may have been incurred many years ago.

II. Asset Fair Value or Impairment Adjustments

- The proposed rules require that the Covered group shall determine gains and losses using the realisation principle for purposes of computing Adjusted Profit before tax, by excluding revaluation effects and impairment accounting adjustments with respect to assets and liabilities and therefore, using carrying values of assets and liabilities as acquired or incurred.
- However, the **impairment constitutes a true economic loss**. Hence, ignoring it will deny taxpayers relief for the loss potentially for many accounting periods. For instance, this will be the case for long-term assets such as PPE, but also on long-dated loans. Similarly, a reversal also constitutes a real economic gain representing a revision to a business cash flow estimate that is tied to real economic changes.
- In its present form, the **rule does not take into consideration the possibility of write-offs neither the obsolescence of assets that are not "realized"** – such as PPE and AR. Moreover, **IFRS does not determine when to write off assets**. Consequently, management judgment is required which may be subject to manipulation.
- For all these reasons, **ICC members recommend allowing adjustments for impairment and revaluations** since they reflect economic reality.
- Additionally, ICC members would like to draw attention to a practical concern also linked to impairment. Where an asset has been impaired, depreciation is based on the net amount left. Hence, **if impairment** is **ignored**, then the **depreciation will have to be recalculated based on the gross cost**. This means that **entities** may have to **maintain a second fixed asset register** to calculate and track these amounts. However, some entities do not keep cost figures once the fair value has been applied which will complicate the application – such as trading portfolios of financial assets. Consequently, **ICC members recommend the revision of such a requirement as it would be too burdensome for companies**.

III. Disclosed Segment and Covered Segment (Schedule D) Definitions

- It is essential to provide **further certainty on the application of the rules for a disclosed segment** since, as in the case of the calculation of the elimination profit, the rules will be adapted to ensure that these jurisdictional measures only take into account the relevant financial data of the Covered Segment and exclude the corresponding items for other disclosed segments which are not in scope. The aim of this approach is to ensure that only relieving jurisdictions which share in the covered segment's residual profit or in scope profit are identified as providing relief under the elimination of double taxation mechanisms.

- ICC members would also expect that **similar modifications** will be needed, and more generally the elimination of double taxation mechanism, in order to accommodate the **exclusions applicable to Qualifying Extractive Groups and Regulated Financial Services**.
- **Clarity** is also necessary in relation to the **scope of application of "disclosed segments" rules**. In the opinion of some of the ICC members, "disclosed segments" rules should not be applicable to a Qualifying Extractives Group as their application to the activities of an integrated extractives business is likely to lead to inappropriate results due to interdependencies existing along the entire value chain and between different business segments. Moreover, for a Qualifying Extractive Group which will already have to bifurcate its group between extractive and non-extractive activities, these rules would represent an additional layer of complexity. Tax administrations will similarly be subjected to the same administrative burden when reviewing the adjustments done by the taxpayers.
- Further clarity is also required in connection to the "corporate segment" definition as reported at page 61, section 9, paragraph 2 Progress Report.

E. Impairment Losses

- ICC members note that Schedule F excludes impairment losses from the calculation whereas Schedule J (2) includes impairment losses when calculating the depreciation Amount.
- For the business community, it is reasonably **unclear why fixed asset impairment losses are treated differently within the Amount A calculations**. Indeed, a differing treatment within Amount A calculation will result in **higher complexity in terms of compliance**. According to ICC members, impairment losses can be seen as part of the economic cost of asset ownership. Thus, they should be treated consistently within the Amount A calculation with the positive consequence of reducing complexity and compliance costs.

F. Return on Depreciation and Payroll

- According to the current version of the rules, ICC members note that the definition of eligible assets and payroll costs includes situations where 1) the covered entity owns the assets outright, and contracts directly with employees and 2) the covered entity leases assets and uses contractors. However, a **covered entity may decide to acquire the same local capability** in a third way **by engaging with a local third-party service provider**. As noted by ICC members, **such an arrangement would not fall under the definition of eligible costs** as outlined in the present version of the proposals which would not include such an arrangement within the definition of eligible costs.
- It follows that while the covered entity has a very **similar economic positioning** (i.e very similar functions, assets and risks) and the **scope** of local activities is the **same** in all three situations (and even the transfer pricing outcome might be similar), the **MDSH calculation is very different**.
- For this reason, ICC members **recommend amending the proposal so that similar local functionality has broadly the same MDSH calculation result** regardless of how it is delivered.
- **Excluded** from the definition of eligible assets are also **property assets held for sale**. A property asset would usually be considered as held for sale once a management decision is taken to divest that asset (or the business using the asset). There can be a significant time lag between this initial management decision and any final sale – during this time business profits within the scope of Amount A will continue to accrue. Hence, ICC members would like to emphasize **that there does not appear to be any valid reason to exclude such property asset costs from the eligible asset costs in this situation**.
- ICC members suggest considering **revising the rules**, to the extent that where a **property asset** remains in use within the **"ordinary course of business"** (notwithstanding that it is treated as held for sale), it should continue to be **included in eligible assets**.

- It should also be taken into account that the concept of return on depreciation and payroll is **defined following an antiquated approach**. As described in the Progress Report, the RODP notion omits to consider value creation by land and more importantly IP, marketing and other intangibles. This would be detrimental for businesses that have heavily invested in R&D or have knowledge intensive digital business models. Thus, the business community recommends either the elimination of the RoDP concept in favour of a more straightforward proportional allocation or at the very least **including intangible and IP amortisation in this notion**.

G. Extractive Revenues Exclusion

- The business community **supports the revenues and profits exclusion of a qualifying extractive group** as indicated in the progress report.
- However, in the definition of Qualifying Extractives Group, the proposal omits bitumen from oil sands, an extractive product included in the text of the previous consultation. The proposal also omits Gas to Liquids (GTL) whilst referring other GTL products (e.g. Kerosene and gasoline). Convinced that this is an unintentional omission given the previous presence of these products in the text of the consultation, ICC members suggest reincluding these additional products under the definition.
- Moreover, ICC members would like to receive confirmation on whether **"Primary Processing"** is restricted to the processing of the group's own extractives or also covers the processing of third party's extractives in the jurisdiction of extraction (for example where the processing is for a Joint Venture).
- ICC members believe that **primary processing shall be considered as an extraction activity per se,** thereby qualifying a group engaged in the primary processing of an extractive product for the extractive exclusion, up to the amount of revenues derived from the primary processing activity. Doing so would ensure a leveled playing field among groups engaged in different types of primary processing, including greener solutions.
- ICC members also respectfully propose to revise the reference to "associated hedging gains and to read **“associated gains and losses from derivative instruments”** in order to avoid unclarity about what constitutes a hedge.
- Finally, the business community would also welcome **clarity on the determination of the non-extractives profitability for the transition phase**. Assuming that the intention is to ignore cross-border limitation for all the purposes of the provisions during the transition period – including determination of extractive revenue (including for the purposes of the short cuts) and the for the profitability test, some ICC members would like to suggest the following amendment to the text:

  “Notwithstanding the provisions of this Act or this Schedule B, during the Initial Transition Phase, a Qualifying Extractives Group may demonstrate that it does not meet the non-Extractives revenue test (including when applying the shortcuts in section 2.5), the non-Extractives segment revenue test, the non-Extractives profitability test or the non-Extractives segment profitability test (as applicable) in the Period by applying any of the following calculations:

  > *a. where a Disclosed Segment or Entity for which 75 percent or more of the revenues for a Period are revenues derived from activities listed under section 14 a, b and c, irrespective of whether these revenues were reported in the Jurisdiction of Extraction, the segment may be treated as an Extractives Segment”.*

- ICC members recommend **applying the same approach to MNE Groups adopting the entity approach**. In its present form, the drafting appears to be limited to the MNE Groups adopting segment approach. However, to reduce filing complexities during the transitional period, ICC members welcome the removal of the cross-border restriction to both the companies applying a segment and entity approach.

H. Administration

- While additional information will be provided in a following consultation document, the business community highlights that the **administrability and clear filing aspects in relation to Pillar One will be essential to ensure that the** rules are workable for tax administrations and taxpayers alike.
- ICC members recommend that **taxpayers should be required to file a single Amount A return with the LTA in order to share only relevant portions with market jurisdictions.**
- Additionally and similarly to the GloBE rules under Pillar Two, ICC members would welcome confirmation that **any request for information from tax administrations outside of the LTA jurisdiction will be governed by the exchange of information protocols under bilateral or multilateral agreements** between competent authorities.
- Moreover, taxpayers should **not be required to pay Amount A until methodologies are agreed in an advance early certainty process**.
- To ensure that compliance burden on both ICC businesses and tax administrators are commensurate with revenue collection, some ICC members recommend the adoption of **minimum threshold of EUR 50 million in Amount A reallocations per taxpayer per jurisdiction** before the MLC would apply.
- Finally, to limit extra burdens on businesses, **taxpayers should not be required to register or open bank accounts in the market jurisdiction** and **should be permitted to appoint a lead entity in each jurisdiction to handle all the compliance and tax payments for the MNE Group**.

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