



29 April 2022

To: Tax Treaties, Transfer Pricing and Financial Transactions Division
Organisation for Economic Cooperation and Development
Centre for Tax Policy and Administration
2 rue André-Pascal
75775, Paris, Cedex 16, France
Submitted by email: tfde@oecd.org

Re: **OECD Public Consultation Document on Pillar One - Amount A: Extractives Exclusion**

Dear Secretariat,

PwC International Ltd on behalf of its network of member firms (PwC) welcomes the opportunity to share its observations on the above referenced public consultation document. In view of our understanding of the nature and urgency of the request, as well as the limited two-week turnaround, we set out below a brief summary of the issues on which we believe the Task Force on the Digital Economy (TFDE) and OECD could focus. We would be happy to elaborate on these further or to discuss other matters in the public consultation document.

We support the stated policy goal for the Extractives Exclusion, i.e., to exclude the economic rents generated from location-specific extractive resources that should only be taxed in the source jurisdiction. In that light, we offer several comments on issues with regard to the proposed approach to the Extractives Exclusion, outlined below:

- We support the development of compliance simplifications wherever possible, in particular with respect to reapplying the 10% profitability threshold to in-scope profits (“Step Three” in the consultation document). Step Three entails bifurcating accounts between excluded and in-scope revenue/ profits and cost allocations. Paragraph 5 of the consultation document notes that work is ongoing in considering how the application of the Extractives Exclusion can be simplified, particularly for Groups that exceed the Revenue Threshold, but whose in-scope profit margin is consistently below the 10% profitability threshold. We encourage further discussion on the development of a “safe-harbour” or exemption in cases where it is clear from the onset that a group’s in-scope profit margin is below the threshold.
- Paragraph 5 of the consultation document also notes that work is underway to consider whether an initial transition period is needed, while Groups adjust their systems to comply with the requirements. It is recognised that the approach outlined in the consultation document will require extensive systems changes which could be both time consuming and costly. We support the development of transition rules, which will provide much needed time for extractive groups to effectively implement the rules.

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- Recognising the intent of “Step Two” is to apply the Revenue Threshold to in-scope revenue, we suggest that Groups be provided an option to subtract intra-Group revenue or deemed revenue at Step Two when the scope of the exclusion for a particular product occurs at a point prior to a sale to an independent third party. This option would be particularly important for vertically integrated Groups that have Delineation Points which do not involve third party revenue. While election of this option would involve additional complexity for those Groups, it would allow them to more accurately assess the amount of in-scope revenues as part of Step Two and should reduce the number of Groups needing to undertake the more complex Step Three requirements.
- The definition of Extraction Activities at paragraph 17 includes the requirement for the derivation of revenue from the sale of an Extractive Product and the conduct of the associated Exploration, Development or Extraction activities. We recommend that the ultimate definition of these concepts is sufficiently broad to include common Production Sharing Contract and Joint Venture arrangements. For example, these arrangements can often involve non-operating joint venture members who don’t directly undertake Exploration, Development or Extraction activities but are responsible for funding those arrangements (e.g., economic operators). The Extraction Activities definition should cater for this and similar circumstances.
- The scope of an Internationally Recognised Reference Price under paragraph 28 for the purpose of identifying the Delineation point of Extractive Activities and deemed revenue will need to be carefully considered to ensure that appropriate indices are included and that the application of the concept appropriately aligns with the policy goal of excluding the economic rents generated from location-specific extractive resources.
- The commentary does not provide guidance on whether Groups that qualify to apply the Disclosed Operating Segment (DOS) approach will be able to elect to apply the Entity approach (or whether this will only be available for Groups that can demonstrate they are unable to qualify for the DOS approach). We recommend that Groups are able to elect to apply the Entity Approach even if they qualify for the DOS approach to ensure those Groups have the most flexibility in assessing the most efficient option in their circumstances. Consideration will also need to be given to how the “entity” concept extends to flow through entities (e.g., partnerships / trusts etc).
- We note that the document released is a working document from the OECD Secretariat and that it does not reflect the final views of the Inclusive Framework members. Effectively, the output remains subject to final agreement, and by extension, can be subject to change. This makes it somewhat challenging to comment on and consider in terms of the other building blocks, both released and unreleased. It also makes it difficult to comment in relation to this document since there are numerous references to the Commentaries that will elaborate on or clarify the application of the rules/approach. The document also clearly acknowledges the complexity involved for determining the Extractive Exclusion. For these reasons, we encourage further consultation when the first comprehensive draft of the Amount A rules is available.



With this letter we kindly invite you to take our observations into consideration during further development of the Extractives Exclusion. We stand ready to discuss the issues raised in this letter in more detail, if that would be helpful at any point - please do not hesitate to contact me or one of the individuals set out below

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Stef van Weeghel', written over a horizontal line.

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