BUSINESS at OECD

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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: *Business at OECD* (BIAC) comments to OECD's Public Consultation Document "Pillar One – Amount A: Draft Model Rules for Nexus and Revenue Sourcing"

Dear Secretariat Team,

Thank you for the opportunity to comment on the Draft Model Rules for Nexus and Revenue Sourcing ("Draft Rules") on Pillar One of the project Addressing The Tax Challenges Of The Digitalization Of The Economy (the "Project"). The Project is unprecedented in its ambition to fundamentally reshape the international tax rules and we do acknowledge and appreciate the steps in the direction of pragmatism that are reflected in these Draft Rules.

As we have recently articulated to the Task Force on the Digital Economy, we believe that practicality and administrability are core principles in the design of Pillar One that will best serve to ensure its successful implementation and sustainability over time. To that end, we are pleased to have the opportunity to offer 1) suggestions regarding the practical administration of the Draft Rules, and 2) alternatives to make the Draft Rules less complex while achieving the intended policy goals, both of which we hope would make the Project a long-term success.

Before providing more specific and detailed feed-back below, there are a handful of observations we wish to highlight up front.

First, we recognize that the Draft Rules represent a departure from the more prescriptive guidance suggested in the 2020 Blueprint, as well as take into consideration the expanded scope of Pillar One. Accordingly, this is the first opportunity for the business community to publicly comment on these changes. We believe the less prescriptive approach to be helpful, but also recognize that it will necessitate an expanded, and multi-faceted approach to implementation, including these elements:

- Given the complexity of the rules, a robust Early Certainty Process ("ECP") – the Draft Rules for which have not yet been published – is in reality indispensable and a prerequisite for a functional Pillar One.
- Robust commentary will need to be developed and published to accompany the final rules, to better define the categorization of revenues, as well as to provide further guidance on what may constitute reliability indicators and sufficient reasonable steps before using allocation keys.

- Beyond the commentary, we also recommend consideration of a process by which in-scope companies may pose case specific questions of application, the answers to which could be published on an anonymized basis to supplement the published commentary. We see this additional process as particularly relevant and helpful as companies assess and attempt to apply the reliable indicators and reasonable steps standards in the Draft Rules to their particular circumstances.
- We also strongly recommend consideration of a transition period for implementation of these sourcing rules, which includes an explicit prohibition against the application of penalties. The transition period should extend through the completion of the initial ECP, as well as provide adequate time thereafter for companies to make any adaptations in processes and/or systems necessary to comply with the company–specific agreements for the application of these sourcing rules reached in the ECP. Transition period guidelines should explicitly recognize that any significant systems requirements should be expected to be minimal pending completion of the initial ECP.

We see the combination of these as necessary to the effective, efficient, and timely implementation of Amount A. These recommended design and administration elements extend well beyond this limited public comment period and process, but we would be pleased to engage further with you and policymakers in the development of a comprehensive implementation process to better ensure success of this foundational element of Amount A.

Second, we note that Amount A will apply only to the largest companies at the outset, but would point out that the goal is to expand its application to a much greater population of companies over time. Our comments provided herein principally reflect input from companies expected to be within the initial scope of Amount A, but we have also attempted to consider the scalability of the Draft Rules to a broader population of companies. Notably, as reflected by our recommendations for a multi-faceted implementation approach above, even the largest companies recognize the challenge to successfully implement these Draft Rules, particularly in the targeted timeframes. We harbor significant doubts about the scalability of these Draft Rules to a much broader group of companies. Ideally, the revenue sourcing rules should be designed from the outset to accommodate the anticipated expanded scope of Amount A. But at the least, policymakers should be expected to further review the results of the implementation of revenue sourcing for those initially in scope and carefully re-evaluate the utility of certain design elements before the application of Amount A is further expanded to more companies in the future.

Third, we urge policymakers to otherwise carefully weigh the merits of attempts to produce arguably more precise information on revenue sourcing based on end consumers against

1) the incremental risks from uncertainty and the potential for disputes that may arise as a result,
2) the additional burden of obtaining information below most MNEs' materiality threshold, and
3) the potential disruption to third-party commercial relationships.

The expansion of Pillar One last spring, and the reference at multiple points in the Draft Rules to the need for allocation keys serve to demonstrate that some elements of indirect allocation is practically needed if the goal is to source all revenues. The business community continues to believe that there are ways to further reduce complexity in revenue sourcing, including through the use of elective safe harbor approaches, that would both further certainty and administration while protecting the taxation interests of market countries (and in particular, those smaller, developing market countries). We make reference to several options for consideration (in Sections 1 and 3, below) that may be applicable in different business settings. This is an area that

warrants additional work and consideration and is perhaps beyond the limited comment period. However, here, too, we would be pleased to engage more fully with policymakers in developing safe harbor recommendations for consideration that balance these interests.

And finally, we note that these Draft Rules are only one building block of Pillar One. Once there is an opportunity to look at all elements of the Pillar One draft rules holistically, we may find that there are further refinements required and areas for supplementary comments. In addition, we have as yet not seen either the accompanying Commentary for these Draft Rules, nor the details of the proposed Allocation Keys. We expect that the future release of these other materials may impact our views on these Draft Rules and therefore draw to your attention that the business community may have an interest in supplementing or modifying our comments on this building block. Finally, we wish to confirm that businesses will have an opportunity to provide input on additional revenue sourcing rules for companies in the extractives and financial services industries that have activities/profits which are ultimately in scope of Amount A.

We recognize the importance of the design and implementation of this building block as foundational to the policy goal of Pillar One, and again thank you for the opportunity to comment. We would be pleased to respond to any questions arising from both our general and specific comments provided, and to providing further support and assistance in implementation efforts to follow.

Sincerely,

Alan McLean
Chair, *Business at OECD* (BIAC) Tax Committee

William H. Morris
Chair Emeritus

Cc: Hanni Rosenbaum, Executive Director, *Business at OECD* (BIAC)

We relay comments we have received from our members, which are broken down into 6 categories:

1. Cost/benefit, materiality and administrability;
2. Achieving clarity and certainty;
3. Additional simplification suggestions;
4. Other feedback and observations;
5. Additional clarifications sought; and
6. Process and timing.

1. Cost/benefit, Materiality, and Administrability

The business community agree that we should not let perfect get in the way of good. The Draft Rules purport to "balance the need for accuracy with the need to limit compliance costs." Our view is this balance has not been achieved in a number of areas. The revenue sourcing and nexus rules should not only reasonably limit compliance costs, but also provide workable rules that can actually be operationalized and effectively audited. We raise some key issues and suggestions below. We also propose some general simplification methods in Section 3 to address these and other issues raised.

Reference	Topic	Issues	Implementation Difficulties	Recommendations
Article [X]: Nexus test	Nexus	Sourcing revenues down to EUR 250,000 without simplification alternatives is too burdensome.	Establishing a nexus threshold of EUR 250,000 is impractical as it is generally very far from thresholds of materiality for companies initially in scope. This revenue threshold represents 0.0025% of the revenue for a MNE with EUR 10 billion in sales. Considering the revenue impact to market countries, setting the threshold at EUR 250,000 will result in compliance burdens for tax obligations (for both taxpayers and tax administrations) of perhaps $7,500 per jurisdiction (in many cases far less) – assuming a 40% group margin and a 40% local	We note the October 2021 Statement said: "Compliance costs (incl. on tracing small amounts of sales) will be limited to a minimum." In the spirit of that sentence, we suggest the following: Increase the nexus threshold where revenues that need to be sourced; for the remaining un-sourced revenues, MNEs can pay a fixed amount of Amount A tax using OECD-specified allocation key(s).

Reference	Topic	Issues	Implementation Difficulties	Recommendations
			tax rate. Under this scenario the compliance cost alone could be easily imagined to be higher than the tax revenues obtained by market jurisdictions, leaving aside the costs for management of audit inquiries related to these filings.	Suggestions for increasing the nexus threshold where revenue need to be sourced: • Suggestion 1: The increased nexus threshold can be pegged to overall MNE revenue, e.g., 0.1% of sales. • Suggestion 2: EUR 10 million, indexed for inflation using an index from a company's home country jurisdiction.
Article [X]: Nexus test, footnote 1	Definition of Revenues	Definition of Revenues need to be clarified to achieve administrability and efficient cost/benefit trade-off.	Footnote 1 on page 5 defines revenues as "Revenues reported in the Consolidated Financial Statements of a Group prepared in accordance with an Acceptable Financial accounting Standard, after applying the agreed adjustments to the tax base, as relevant." However, the Draft Rules then mention several categories of income that are not necessarily always categorized as revenues, such as revenues from government grants and non-customer revenues. Here are a few more examples where income is not reported as revenues in a group's audited financial statements in certain industries: • In accordance with accounting standards a MNE excludes a portion of the sales revenues from a hyper inflationary country in its group consolidated financial statements. Therefore based on this measure, its revenues in this country per the group consolidated financial statements will be less than its actual sales.	Revenues should mean net revenues/sales/turnover per a group's audited consolidated financial statements. Revenues represent income earned from third parties in the ordinary course of the MNE's business and are the first line item in the MNE's group consolidated financial income statement. Revenues will not include income that is not earned in the ordinary course of the MNE's business or which would otherwise create an inflated result or potential double counting of sales (for example, in the case of the sale of raw materials to a 3rd party manufacturer). The proposal is that the Amount A tax base will be 25% of the MNE's profit before tax in excess of 10%, as adjusted for certain items such as capital gains, and Revenues will be used to allocate the Amount A tax base to market jurisdictions. We also note that the use of consolidated Revenues will require commensurate

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			• Disposal income (e.g., the sale of a business) is reported in operating profit but not in revenues. • The sale of raw materials to a 3rd party manufacturer who produces finished goods for purchase by the MNE would not give rise to revenues but would be reflected in the accounting for cost of goods sold. • JVs or minority interest contributes to a MNE overall profitability but is not recorded in revenues. • Commodity hedge gains – these are financial gains from hedging contracts related to raw materials primarily to manage commodity price fluctuations; not for profit. The results of the hedges would be in cost of goods sold. • Government Grants and incentives are generally recorded under accounting rules (IFRS IAS 20) either as revenues or as a reduction in costs/expenses. Therefore the definition of revenues should be further clarified. The inclusion of income in the sourcing formula that is not treated as Revenues by the MNE would require an additional reconciliation that is not subject to any independent verification in the same way as the Revenues in the audited group consolidated financial statements, with a resulting	adjustments to the Amount A tax base in respect of JVs and minority interests. This is because the Revenues and the profit of the Group may include Revenues and Profit that do not belong to the Group but to the other 3rd party shareholders. For example, a subsidiary is owned 60% by the MNE and 100% of the subsidiary's revenues and profit will be consolidated as Revenues and Profit of the MNE, with 40% of the Profit will then be treated as minority interests. Finally, the definition of government grants should be consistent with the definitions adopted in the Pillar Two Model Rules.

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			loss of public transparency. New IT systems will also need to be created to consistently reclass these income items into revenues for the purpose of Pillar One and sourcing them.	
Article [X]: Source rules	Sourcing rules (in general)	The expectation set by the Model Rules that transactions will be sourced at an item-by-item level is not administratively achievable or desirable, and sets up unreasonable expectations on audit.	Tax compliance under both domestic income tax law and Pillar One begins with financial statements, which aggregate the results of thousands (or likely millions) of separate transactions, which may be recorded in a variety of systems and ledgers which are consolidated or aggregated to prepare legal entity or consolidated financial statements. Underlying transaction-level detail is not routinely used by corporate tax departments, and imposing this as a standard requirement sets up an enormous compliance burden and an impossible standard to meet on audit. Furthermore, contractual language will often not contain the relevant location data. For example, a contract with an independent distributor may provide that the distributor can sell finished goods within Asia, as opposed to a specific country within Asia. Further, companies at this scale would have millions of customer contracts.	We understand the Secretariat will provide further guidance on what it meant by sourcing revenues by transaction. Given that sourcing at the level of every separate transaction (as we interpret that in the Draft Rules) is overly burdensome, we would like to suggest the below approaches which take into account pricing differences between markets without needing to source revenues transaction-by-transaction: 1. Source by revenue (instead of unit) where practical to account for pricing differences by market; 2. Where #1 is not practical, source by unit and adjust for pricing differences using CPI, GNI, or other publicly available data deemed appropriate by the OECD to adjust for pricing differences.
Schedule A, Part 1	Revenue sourcing	Sourcing revenues for de minimis business lines without simplification alternatives is	For taxpayers with a predominant business line and a de minimis secondary revenue stream that do not meet the supplementary transaction rules (e.g., conglomerates), the costs to track, source and allocate the de minimis revenue stream (and for tax authorities to audit it) far outweigh the benefit in incremental sourcing/allocation accuracy.	Elective de minimis rules should be added, such as: • Taxpayers may source the revenues of the de minimis revenue stream in the same proportion as the revenues of their primary business line; or

Reference	Topic	Issues	Implementation Difficulties	Recommendations
		too burdensome.		• Taxpayers may source its secondary revenue streams based on a Regional or the Global allocation key (if necessary, after application of the knock-out rule) if the secondary revenue stream does not exceed a percentage of the total revenue. This would provide efficiency gains for all involved, no revenue would remain unsourced/unallocated, and market jurisdictions would receive Amount A based on an acceptable proxy.
Schedule A, Part 2	Knock-out rule	The "Knock-out Rule" is unrealistic and unduly burdensome.	The Knock-out Rule should only be required for very clear cases of legal, contractual or trade restrictions to "knock out" a country from the global allocation key. Otherwise, no taxpayer at the scale of Amount A companies will be able to do a contractual analysis by customer to determine if this applies, and the global allocation formula, which is intended to be an objective method in unclear situations, would itself become a fact-based subjective test. Also, the rules should not require taxpayers to prove a negative.	To the extent that this feature is kept, it should be solely elective for taxpayers who wish to do this for selected transactions where they have clear information to support the knock-out rule.
Schedule A, Part 3, B	Tail-end revenues	While some companies are able to source 95% of its revenues, for others the 5% threshold is	For these companies, needing to source revenues down to 5% can be costly.	It may be good to first gain further experience with the practical application of this particular requirement. It's therefore recommended to remove this requirement, or include a higher percentage until further experience is gained with the practical application of this particular requirement.

Reference	Topic	Issues	Implementation Difficulties	Recommendations
		rather low, particularly when a Covered Group predominantly operates in developing countries.		
Schedule A, Part 5, H	Revenues from Business to Business services	Current steps to identify large business customers (LBCs) too burdensome	The threshold for using the billing address as reasonable for an LBC ($1-3M) is unreasonably low. In addition, it is likely impossible to determine aggregate billings to any specific LBC – as different business units may transact differently (All entities owned by an LBC may or may not even share a common name or external indicator that they are part of an LBC). In theory, to implement this rule, it would be required to have a listing of all potential customer addresses used by each LBC (from that LBC), cross referencing that with invoice addresses for all invoices, aggregation of invoices to addresses belonging to each LBC, obtaining the non-public CbyC for each LBC customer annually (LBCs that are ultimate parent entities (UPEs) would not be willing to provide this data; LBCs that are not UPEs would not have access to a MNE's non-public CbCR), and sourcing aggregated LBC customer revenues according to that allocation key. We also query if such requirements will be needed whatever the threshold is for the LBC.	LBCs should not be distinguished from other B2B service customers. If a distinction must be made, the threshold should be increased significantly, and we offer detailed suggestions on more reliable indicators in Section 4.1.1.

On taking reasonable steps to identify reliable indicators, we stress three key points:

- First, companies should be able to use data that it possesses in the ordinary course of business (including as part of its regulatory reporting requirements) and not be required to request information from third parties. We provide some examples of such data throughout our responses. Also, wherever a list of indicators is provided, it should always be permitted to use a mix of those indicators to account for the different location data that may be available in the ordinary course of business, which will evolve over time in response to industry and regulatory changes.
- Second, headcount of customers, and any other metric that requires customers to provide taxpayers their non-public business data, is inappropriate (note the EU public CbCR will not provide headcount information by all countries as it allows aggregation of data to a certain extent). Customers will not be willing to do this because this is burdensome on them and reveals confidential information. It also makes taxpayer compliance dependent on third parties that are not under the control of the taxpayer. Even in the rare instances when such data can be collected at some point in time, it is unrealistic to expect companies to have this data available on an ongoing basis. Accordingly, to the extent that documentation options require the use of third party data (e.g., the LBC rule), these options should be elective because it is not practical and also inappropriately interferes with third-party business relationships of the taxpayer. Finally, to the extent that third-party data is used, MNEs should not be 1) obligated to independently confirm the accuracy of the third party information or 2) penalized if the data provided to the MNE by the third party is inaccurate.
- Third, companies should not be required to build out expensive, time consuming systems and processes simply to source these transactions without other business value. More generally, requiring companies to review contractual data for transactions or customers is unreasonable. Finally, it should be considered that no additional efforts and exposure occurs for the sake of complying with data privacy such as GDPR.

Finally, the Secretariat should undertake a follow-on cost-benefit study of the utility of incremental revenue sourcing requirements, including consideration of the application of the facts and circumstances based sourcing rules to a broader population of companies, should the application of Amount A be further expanded beyond the original scope.

2. Achieving clarity and certainty

2.1.1. In general

In this section, we point out clarifications that need to be made either in the upcoming model rules or in the Commentary, in order to enhance tax certainty and prevent disputes. Key points include: having a robust dispute prevention process, especially as the sourcing rules have become more facts and circumstances based; having clear definitions for words such as "reliable", "reasonable step", "reasonable effort", or "consistently"; and ensuring that Pillar One is adapted uniformly across jurisdictions.

Reference	Topic	Issues	Recommendations
Article [X]: Source rules	Sourcing rules (in general)	The model rules must establish a clear process and limitations on how sourcing may be audited. Under Pillar One, due to the requirement that all revenues from all entities must be sourced under new rules, and in some cases apportioned under a variety of factors, potentially every sales transaction of the enterprise, from whatever source or entity, is the subject of inquiry or audit demands from every jurisdiction participating in Pillar One (in extremis, 137 countries). This introduces the risk that Pillar One does not just result in the partial reallocation of taxation rights between countries, but in fact leads to multiple levels of taxation due to disagreements between countries. In addition, the varying processes for statute closure in different jurisdictions potentially puts an unsustainable burden on companies for information retention. (Current document retention by companies is already costly – and generally requires maintenance of fewer documents and data sets; retaining the vastly larger dataset contemplated by Pillar One until the statute closure of the slowest jurisdiction would create unmanageable costs simply due to the additional needed data storage.)	We understand that as part of the dispute prevention process (i.e., ECP and beyond), a panel, instead of individual tax authorities, would review and agree on a MNE's Amount A calculations. We wish to confirm that such panel will assess and validate a MNE's sourcing calculation (including the indicators and allocation keys that have been used) so as to minimize the unreasonable burden that would be created by potentially limitless audit demands from multiple jurisdictions requiring proof of sourcing that may have been demonstrated multiple times before. We also suggest that once the ECP is final, there should not be a need for document/data retention for a certain period of time (e.g., 3-4 years) or unless there are material business changes.

Reference	Topic	Issues	Recommendations
Schedule A, Part 2	Reliable Method	We understand the upcoming Commentary will provide further guidance on applying reliable indicators. However, we would like to provide some suggestions on how to define the term "reliable".	The Rules should clarify that where there are multiple Reliable Indicators, the taxpayer has the option to choose among them. It should also be made clear that a Reliable indicator meeting the criteria outlined in the Model rules should not be subject to challenge by tax authorities who prefer another indicator (i.e., standard is 'a' reliable indicator, rather than a 'best method' standard that could be disputed).
Throughout document	Reasonable Efforts / Steps	The terms "reasonable efforts" or "reasonable steps" are used in several places in the document. Without commentary, this term is too subjective and potentially will be the source of many disputes.	We believe the Commentary should provide a robust explanation of the meaning of reasonable efforts/steps. We also provide our inputs on what reasonable efforts/steps should mean below: ● MNEs should explore available existing and directly available information (data that an MNE possesses in the ordinary course of business or publicly available data) to identify reliable indicators or another reliable indicator. ● MNEs should not be required to obtain their customers' non-public business data. ● MNEs should be allowed to conduct statistical sampling as reasonable efforts/steps to identify reliable indicators, contingent that the base data are data that an MNE possesses in the ordinary course of business or publicly available data.
Schedule A, Part 2	Reliable method	The expectation that a reliable indicator be used 'consistently' is not yet clarified. If poorly defined, the requirement that a reliable indicator be consistently used and available might	We would like to see more commentary explaining how to use reliable indicators consistently. Many enterprises will have different data availability for different

Reference	Topic	Issues	Recommendations
		result in a determination that there was no reliable indicator, requiring increased use of allocation keys.	business and/or entities, driven by systems availability, business need, etc. This might be the case even for a common business, if multiple entities (perhaps acquired separately) engage in third party transactions. As mentioned in Section 1, we believe MNEs should be permitted to use a mix of reliable indicators consistently to account for such differences.
Schedule A, Part 2	Reliable method	Similar to the above point, companies may have information that constitutes a reliable indicator but only for a portion of their business (i.e., specific to a particular product line(s), or to a particular region(s) or particular third party distributor(s)).	Commentary should address whether and when limited or incomplete reliability indicators could nevertheless be applied to other areas of its business for purposes of sourcing. Also see statistical sampling idea discussed in Section 3.
Background, Model Rules	Implementation	Jurisdictions "could use" these rules and "will be free to adapt these Model Rules". This overall structure raises the very real possibility that Pillar 1 becomes a patchwork of rules similar to DSTs. This places critical importance on which rules are in the MLC and which rules are in the Model Rules and Commentary.	(1) While we recognize that the MLC simply cannot contain every Pillar 1 rule, we strongly recommend that the MLC contain as much detail as practically possible, because the more substance that is left to the Model Rules and the Commentary, the more Pillar 1 becomes a patchwork of rules across jurisdictions. This is especially an issue for nexus and revenue sourcing, because different rules in different jurisdictions will lead to double taxation. (2) Consider requiring enactment of the Model Rules as mandatory (similar to the MLC itself) in order for a jurisdiction to get the benefits of Pillar 1, e.g., a revenue allocation.

2.1.2. Additional categories of revenues to be added

The Draft Rules provide only limited definitions of the revenue categories for purposes of providing sourcing guidance. We believe the following categories of revenues and how they should be sourced should be either added to the Draft Rules or clarified in the Commentary. The categories of transactions should also be sufficiently flexible to accommodate new types of transactions in the future (e.g., non-fungible tokens).

Missing industry / category	Comments/suggestions
Transformation and separation of air and certain natural gases in order to produce industrial gases (mainly oxygen, nitrogen, hydrogen and CO2) which are then delivered to industrial customers who use them for their production activities.	This is really different from the manufacturing of components. The company manufactures and sells an industrial product that constitutes a means of production, a source of energy or a raw material, depending on the case. This product is by nature impossible to trace to other market countries, since it is consumed on the spot, it is coalesced, and even disappears, in a production process. It is not incorporated into another finished product. We have understood from the Secretariat that the approach in this situation could be to treat the industrial gases as finished products and to consider that the place of delivery is at the level of the direct industrial customer. We believe that it is crucial that this approach should be confirmed in writing in the Model Rules so as to avoid any future dispute on this point.
Manufacturing services	Short of changing third-party contractual relationships, which may anyway prove impossible due to anti-trust reasons or pure business reasons, we believe we would need to default to invoice to (i.e., B2B services)
Revenues from financing	As this draft acknowledges, this rule will likely need to be modified to account for the minority of financial service (FS) activities that do not fall under the regulated FS exclusion. The key question is, assuming that there will be some non-regulated FS activities and thereby revenues, how can we categorize them (not just as Services but what if they are bundled or interface with regulated FS – see below). Because of the inter-connectedness of financial services, creating artificial distinctions between regulated vs. non-regulated FS businesses and activities will be hard. Doing so may require the unbundling of services performed for a single fee into various pieces in the revenue sourcing process. We anticipate this will be very problematic and laden with future controversy. Having a bigger breadth for the FS exclusion would help.

Missing industry / category	Comments/suggestions
	In addition, because FS involves a web of multiple intermediaries, the reseller provisions in this consultation are not readily transferrable to FS (i.e., will be impossible to sort through (and unduly complex). How do the rules address situations where the Reseller is buying finished goods/services but adds some sort (and how much) of value to the Consumer? The rules should be designed such that Covered Groups who have resellers can, absent the voluntary provision of sufficient consumer data, treat these resellers as the consumer. Further, as with previously-stated comments, no added commercial obligation should be imposed on Covered Groups to modify contracts, navigate data privacy or proprietary information barriers. Requiring so would distort competitive market functioning. We think a separate consultation with the FS industry should be called for. We would be happy to explore existing and available data that can be potentially used as reliable indicators for in-scope FS revenues.
Revenues from non-excluded extractive activities, if applicable	While extractives' profits are not specifically included in this consultation on revenue sourcing (pending the finalization of the extractives exclusion), we would like to confirm that businesses will have an opportunity to provide input on revenue sourcing rules for the profits of extractive groups that do end up in scope. We also see the following potential challenges if revenues from extractive groups are included: ● Identifying the "predominant character" of third party revenues on a transaction by transaction basis may not work if only part of a group's revenues/profits are in scope, because many of the revenues/transactions that are in-scope will be from/with related parties. ● Query whether each category of in-scope transaction should be viewed anyway in isolation of the broader purpose of the group's actual third party revenues (i.e. should the categories really be "marketing services" and "shipping of cargo", or should we rather be looking more at the destinations of products even though the profits from the sale of those products may be out of scope).

2.1.3. Borderline cases in making the distinction for a category

Finally, below are borderline cases where a type of revenue could be put into different categories. Since the sourcing rules differ by category, distinctions in categorization may greatly impact sourcing outcomes. Commentary should provide significantly more detail on the application of these definitions, in particular for those areas in which the distinction will impact sourcing.

Borderline cases	Comments/suggestions
There is a particular need for additional guidance distinguishing between finished goods and components, specifically, the distinction between the sale of a good used in the production of another finished good, as distinguishable from the sale of a component that is incorporated into a finished good that is sold to an end consumer. We understand that sourcing of the former to be to its place of use in production process, whereas the latter is to be sourced to the location of the end consumer of the finished good. To date, the examples have focused on the relatively simple distinction between production equipment and components. But what about other components of production that are transformed into something else in the process of manufacturing? Also, for the pharmaceutical industry, it remains unclear how the itemization works for active ingredient vs. semi-finished vs. finished products.	One could presume that raw materials or other "components" that are substantially (further) transformed in the manufacturing process would be sourced differently from a component. But at what point is a component substantially transformed? This needs to be addressed in substantially more detail, at the least in the Commentary. Suggest that Commentary establish clear standards for what constitutes a component; i.e.: • applies where the component item has a consumer market that is independent of the business customer; • applies where the company can reasonably demonstrate that its business customer meets a threshold level of manufacturing.
Looking transaction by transaction there might be overlap in the categorization of certain revenue streams. For example, how IP related to finished goods will be treated when embedded in components as active ingredients (impossible to trace embedded ingredients, components, IP rights…).	How to source bundled transactions, especially those where IP is embedded in services/tangible goods sales, should be elaborated more clearly in the Commentary. In the pharmaceutical industry, the embedded IP is usually much more valuable than the rest of the product.
An issue that impacts the pharmaceutical industry is that the application of the sourcing rules depends on the definition of the transaction being for goods or for services. For example, if a country is not able to buy a medicine because it is currently unapproved, it may then pay for services to fund the development of that medicine and to secure manufacturing capacity until a time when the medicine becomes approved when it would purchase the medicine as a transaction for goods (after taking into account the prior services it had procured associated with the goods). Clarification is needed as to how the	We believe that this is situation is covered by Part 8 when the arrangements are with public institutions / governments. We suggest that for arrangements between companies that the sourcing rules for goods and services in such circumstances default to the country paying for the development services.

Borderline cases	Comments/suggestions
revenues would be sourced in these circumstances where the transaction moves from being one for services to one for goods or remains a mixture of the two.	
The treatment of certain online purchases (e.g., an in-app purchase in an online game) doesn't appear to have a clear home within the Rules.	Possible treatment includes Digital Goods and general business-to-consumer services. Additional clarity would help. There may be transactions where the purchaser is not the consumer (e.g., someone gifts a digital good to someone else's e-mail). There may not be information on the "consumer" (good sent to e-mail with no additional account information), and in such circumstances the rules should allow for sourcing based on location of the purchaser given goal of simplicity/administrability.
There is potential overlap between the definition of Intangible Property and digital goods as some digital goods are considered copyrighted materials (question of alienation of intangible property).	The rules should make clear that the predominant character for such transactions is as a digital good, with additional language clarifying that digital goods, even if such goods are of copyrighted material, do fall within the sourcing rules for Intangible Property.

2.1.4. Clarifications sought on sub-categories of revenues

We would like clarifications on how the sourcing rules would apply in the following examples. At the same time we offer some suggestions:

IP Licensing to a Business Customer for Use by the Customer in Developing their Product

Music Business licenses a song for use in a Motion Picture being made by a third-party studio and receives a fixed fee as revenue. The third party incorporates the song into its finished product (Motion Picture). Whether the motion picture is released, when it is released and how it is released is

in the control of the third-party studio. In this circumstance, there are no "Reliable Indicators" available and the sourcing of the revenue of the music license should be determined using the Global Allocation Key.

IP Licensing for Merchandise Related to Marketing of Products and Content of the Covered Group.

Motion Picture Studio licenses certain copyright (character, name, likeness, etc.) to a third-party merchandiser to produce and sell promotional products as part of the marketing of the motion picture being distributed by the Studio. Game Business licenses certain copyright (tradename, logo, etc.) to third party merchandiser to produce and sell promotional products as part of the marketing of its game console or game content. In the circumstance where the Covered Group is NOT making the sale of the promotional products directly, there is no "Reasonable Indicator" available and the sourcing of the license fee revenue should be determined using the Global Allocation Key.

Sports Business Service for a Multi-Country Tournament Pursuant to Single Contract

Sports Technology Services to support various competitions can sometimes be sourced to the location of the event. However, there are contracts with Sports Leagues and Federations that are multi-year contracts covering multiple tournaments and leagues. In these cases, the actual locations are not known at the time of the revenue recognition although the universe of potential locations may be known. Therefore, there is no Reasonable Indicator and the sourcing of the revenue should be by either a Regional or a Global Allocation Key.

Bundled Products of Finished Goods and Digital Services

As a promotion of Finished Goods, options to buy bundles with download of content are often used. In these circumstances, the included download of content, or limited time subscription to internet services, would be viewed as a supplementary service and the Revenue would be sourced under the Finished Good rules.

Cloud Computing Services Designed for Onward Use

Oftentimes, a Covered Group provides cloud computing services as a platform to a LBC, and the LBC provides services to its customers using its own software on the platform. For example, services are provided to TV Networks to allow journalists to upload content into cloud from anywhere in the world and allow the content to be edited by producers from anywhere in the world. Content is edited and ordered for broadcast and the Service is used to interface with live connections to journalists during broadcast. The Services are generally contracted by the headquarters of the network for use by employees anywhere in the world. There is no Reliable Indicator for sourcing by use of the service, and using headcount of LBC is not reasonable as we will discuss in Section 4.1.1 below. Revenue in such cases should be sourced by global economic data, or see other suggestions we raise in Section 4.1.1 on B2B services provided to LBCs.

Cloud Computing Services in General and Software as a Service Revenue (SaaS)

Similar consideration should be made for SaaS (a category of cloud computing services) provided to customers. It would be impossible to expand the analysis of the place of use beyond that direct customer. Further, it needs to be considered that in case of moving closer to final consumption, this would raise further complexities also from timing perspective. It would e.g. to be considered that some rights and licenses are purchased from purchasing entity, but kept available for further usage in the group at later time. Therefore, absent of Another Reliable Indicator (see one suggestion in Section 4.1.2), the place of use should be sourced to jurisdiction of the purchasing entity, regardless of whether the purchasing entity is an LBC.

There is a provision regarding B2B services through a reseller (Schedule A, Part 5, H, 8.-10.), and the meaning of "reseller" should be clarified. As shown in the above case, if the customers add their own services to the SaaS provided by the Covered Group and provides such additional services to their customers, would the customer be considered to be a "reseller"? Footnote 32 notes that the rule for Blended Transactions would apply where the Reseller was reselling the first service with its own services but does not define the rule for Blended Transactions.

Fact pattern where an ad buyer pays a single price globally for unlimited views during a specified time,

We believe this situation should follow the same sourcing rule of viewers per jurisdiction.

Services / Mobile communication / data services with international mobility

Telecommunications services provided to a fixed premises are sensibly considered to be services connected to tangible property (Schedule A, Part 10, 51. C.), and fixed-line telephones are considered to fall under this category. However, there is a need for clarification on how to determine the source of revenue for mobile telecommunication /data services with international mobility (e.g., international roaming services and international use by leasing or lending mobile devices). Applying both B2C and B2B to mobile telecommunications services in the general manner suggested would be over-complicated, difficult and unnecessary. Further, using the location information of the customer as an indicator can be subject to restrictions on personal information protection in some countries.

As alternative reliable indicators, it may be possible to consider (1) the revenue from mobile communication / data services, including those with international mobility, is generally considered to have been generated at the location of the purchaser at the time of the contract, or (2) the revenue from mobile communication / data services with international mobility is considered to have been generated at the location of the service provider, or (3) the place of the international dialing code associated with the SIM card; this approach is already widely accepted without problems in the field of VAT in many countries.

Intangible income in pharmaceutical industries

In the pharmaceutical industry, there are mainly three stages leading up to the sale of a finished pharmaceutical product: research (pre-clinical trial stage), development (clinical trial and application for approval), and sales. At each stage, intangible assets can be the subject of transactions.

For example, when considering the pharmaceutical out-licensing of a compound at the stage after research is completed, a single contract with a customer generates several different types of royalties: initial payments, development milestones, and sales royalties. While sales royalties are considered to be clearly tied to the final product, the initial payments and the development milestones are not necessarily tied to the final product because the final product has not yet been sold when the revenue is realized and the contract may be terminated due to cancellation of the development. As for the initial payments and the development milestones in this case, we understand that it is necessary to consider licensees of the compound as the final customer, and it is sufficient for the Covered Group to prove this. The further explanation should be added.

Intangible income in pharmaceutical industries (cont.)

An issue that impacts the pharmaceutical industry is that there may be challenges in determining the source for revenues from intellectual property due to the economic characteristics of the pharmaceutical industry. For example, if there is a R&D milestone or lump sum acquisition of intellectual property for an asset not yet on the market, it is highly unlikely to be possible to determine at the point of payment of that milestone where the final customer for any future product sales will be or where the medicine will ultimately be delivered at some time (possibly decades) in the future if the medicine is successful. In fact given the nature of the payment is in relation to a R&D milestone, there may never be a sale in relation to that IP if the medicine does not come to market. Clarification on how to determine the source of such payments is needed.

We suggest that payments for intangibles between entities sourced using a pre-provided allocation key if they relate to "pre-approval stages" for the medicine. Alternatively, if they are not outside of scope, then the source of the revenues should be the other pharmaceutical company rather than an attempt to look forward many years in time to the final customer which will be uncertain.

Even where there is an actual sale of goods for sales based royalties/SRPs, this would be challenging to implement as it would require information exchange between the MNE's at a very granular level including sales value. This may be difficult in practice and companies may be obliged under competition law not to provide the data to each other at that level of granularity.

3. Additional Simplification suggestions

As affirmed in footnote 12 of the Draft Rules, "reasonable steps" must reflect "commercial reality and not impose undue burdens". In addition to the de minimis suggestions offered in Section 1, we offer several additional simplified approaches / reasonable steps here, so that the policy goal is achieved and MNEs do not face considerable IT systems development costs or use of resources for low amounts of tax liability.

Reference	Topic	Simplification idea

Schedule A, Part 2	Reliable Method	In the absence of significant deference to an enterprise's determination of a reliable indicator, many enterprises would prefer to utilize a regional or global or low-income allocation key. (Use of a reliable indicator could be challenged on multiple bases – that it was an inappropriate indicator, or that some of the data reported was inaccurate, or that it was not used "consistently". In many cases use of a simple allocation key would be far preferable.)
		
		We therefore suggest that the Model Rules provide Covered Groups the ability to electively use either the OECD allocation keys or a Proxy Allocation Key that is based on published data sources, be it government, academic or industry (i.e., could be macroeconomic or industry data). This would ensure both Covered Groups and tax administrations secure the significant advantage of a simple, reliable, consistent and resource-light process to determine taxes due on allocable residual profits to Market Jurisdictions (as determined pursuant to the Nexus rules). This approach:
		• Respects that revenues and profits, by Market Jurisdiction, might not otherwise be aligned.
		• Is readily available for financial reporting and tax administration review purposes.
		• Would substantially simplify the application of Pillar One in multiple respects (e.g., wholesale global IT systems rewrites, minimize tax controversy, allow tax payments to be made sooner by Covered Groups and on more predictable bases to Market Jurisdictions and, in an Independent Distributor/ Reseller/ B2B context, eliminate the drag on necessary data gathering of useful but oftentimes proprietary or legally-protected data).
		• This Proxy Allocation Key could be supplemented, as follows—
		  ○ Subject to preclearance through the ECP.
		  ▪ A transition rule, respecting 'good faith' actions of the Covered Group could be employed during the interim period.
		  ○ Might require use of such Proxy Allocation Key for, at least, the initial 8 years unless the Covered Group undergoes a 'change in ownership' ([50]% or more change among its [> 10]%shareholders.
		  ○ The Secretariat can conduct analyses on the cost/benefit of this election during its year-7 review before expanding the scope of Amount A to a new group of companies.

Reference	Topic	Simplification idea
Schedule A, Part 3, B	Revenues from Finished Goods sold to Final Customers through an Independent Distributor	We also believe that safe harbor rules could be developed to be specifically tailored for the sourcing of the sale of finished goods through independent distributors. We can foresee multiple variants of this simplified sourcing rule, but in theme, it would consist of a much narrower application of allocation keys, involving two elements: 1) Apply a general rule of sourcing to location of third party distributors, as we continue to believe that serves as a very reasonable proxy for the country of end consumers (in particular in large and developed market countries); 2) Apply an exception for designated small market/small per capita countries (which we believe would represent less than 5% of global consumption) – sourcing revenue to these markets in a fashion consistent with their share of an allocation key, with a commensurate reduction in the sourcing in step 1, as needed.
Schedule A, Part 3, B	Revenues from Finished Goods sold to Final Customers through an Independent Distributor	Where shipping costs exceed [10%] of gross margin, MNE can reliably conclude that the country of ship-to location is the country of the end consumer, since it would be uneconomical to see material levels of onward sale of those products into another country.
Schedule A, Part 3, B	Revenues from Finished Goods sold to Final Customers through an Independent Distributor	There is a practical point that there should be some ability for an MNE to apply sampling of a reliability factor to a broader population of its revenues. A few examples - • User activation information only applies to a company's largest-selling product. But the results of that sourcing could serve as a proxy for sourcing of other finished goods for which it may not otherwise have a direct other reliability factor. • If related services or content are sold to end consumers (e.g., apps/digital content), that could serve as a proxy for sourcing of finished goods. • If data must be sought from third party distributors, an MNE could apply statistical sampling of data sought from distributors, from which it could extrapolate and apply to the entire population of finished goods. Preferably, this statistical sample result could also be leveraged and used for multiple years.
Schedule A, Part 3, B	Revenues from Finished Goods	For the pharmaceutical industry, if there are country specific packs then by default this is treated as the country of the final customer unless there is an overarching principle of freedom of movement within a region (as per EU). Also, if

Reference	Topic	Simplification idea
	sold to Final Customers through an Independent Distributor	there is no legal process where packs that have been delivered into the country by the distribution entities can be exported and then sold in another country under applicable product licences, then the country the master contract delivers them to should be determined to be that of the final customer with no further work or transaction by transaction analysis required.

4. Other feedback and observations

4.1.1. Cases in specific rules where the enumerated indicators would generally not be reliable

Reference	Topic	Issues	Recommendations
Schedule A, Part 4	Revenues from Components	Requiring component manufacturers to determine revenues based on the final customer of the final finished good places an undue burden and impossible standard for component manufacturers to reasonably comply. Components like semiconductors are sold in bulk and incorporated and substantially transformed by unrelated parties into an altogether different product (e.g., a mobile phone, a computer) or sold in bulk to a third party. While there may be a contractual relationship between the component manufacturer and the component distributor or the Finished Good manufacturer, there is no contractual relationship with or visibility into the multiple tiers of Finished Goods distributors, resellers or retailers down channel. As such, the taxpayer does not know the location of the third-party's Finished Good to the Final Customer. Without the ability to access the destination of the Finished Goods, it is impossible for a Component manufacturer to determine the location where the Finish Good is sold to the Final Customer. As discussed above, companies should not be required to access information	The proposed sourcing rules for components parts need to be revised to a standard that can reasonably and practically met. Therefore, we would recommend that for components, the "revenues derived from a transaction for the sale of Components are deemed to arise in [a Jurisdiction] when the Component is sold to the direct customer of the Component manufacturer" • As the primary rule is that revenue must be sourced on a transaction-by-transaction basis according to revenue earned from the transaction, the sold to information is the most reliable and reasonable indicator that the component manufacturer collects pursuant to its commercial and legal obligations. • While the "sold to" information is the most verifiable information the component manufacturer receives with respect to the use of its product by a third-party, at a minimum, the component manufacturer should only have responsibility to the third-party to which it directly derives revenues.

Reference	Topic	Issues	Recommendations
		collected by another taxpayer (such as a customer or a customer's customer) in order to determine sourcing.	
Schedule A, Part 5, H	Revenues from Business to Business services	Where a LBC is involved, headcount is a poor proxy where Pillar One is seeking to direct revenue to where consumers or resellers are situated. Headcount ignores relative compensation differences (e.g., tech/ service hubs v. front-office v. manufacturing functions). Many LBCs have located in low-cost, convenient time zones and/or regionally-focused centers, regardless of where their consumers are situated. Sourcing aggregated LBC billings on the basis of aggregated headcount has no factual linkage to the use or benefit of that service. Use of customer's headcount allocation key is also unreasonably complex – it would require customer-specific annual requests for non-public data unavailable to the filing group in a reasonable timeframe to permit compliance, and would have no plausible linkage to the sourcing of services performed. (Most professional services, for example, would not be 'location-specific' services – or might be a mix of on-site and remote services, and such services are not appropriately sourced on the basis of LBC customers' total headcount.)	In general, taxpayers should be given flexibility in their approach (e.g., location of the direct customer, using general B2B rules, or the Regional and then Global Allocation Key), as it is unclear what the policy objective is of treating revenues from LBCs differently from other B2B service revenues. Some companies may have more granular data on LBCs' customer location. We offer three suggested approach below for those companies. All three suggested approaches should be elective taking into account the different circumstances that will apply to different companies. **Suggestion 1:** For businesses that are decentralized and use different ERPs, or businesses that have local billing in place, billing address may be a reliable indicator, even for LBCs. LBCs may use numerous billing addresses, typically linked to the entity or unit consuming the service. **Suggestion 2:** Revenue is allocated to each relevant jurisdiction on a facts and circumstances basis, taking into account different pricing and different products and services for each territory, as specified in the contract. **Suggestion 3:** Taxpayers can take reasonable steps to consult available public sources of information, e.g., a provider of cloud services could find public information about its customers' daily active users (DAU) by region in their public SEC filings.

Reference	Topic	Issues	Recommendations
		Query how customers which change membership in LBCs during a tax year would be treated (as member/customer lists of LBCs could not be static given M&A activity, corporate restructurings, etc.)	

4.1.2. Examples where a certain type of information should be considered as Another Reliable Indicator

As mentioned previously, it would be helpful to explicitly allow an opt-in election to use allocation keys on a business unit, product-line, or similar level to source revenues (e.g., sales of X business line are available globally other than Iran, North Korea, and Cuba; apportion accordingly using the GDP Consumption data as OECD has noted). It might be challenging to establish what level of detail and support would be needed to determine product line, etc. but this is a more reasonable and practicable solution. Companies that wanted to or had the data available to source by Reliable Indicator or Another Reliable Indicator would of course remain welcome to do so. We list several suggestions for Another Reliable Indicator below. Finally, to avoid duplication of compliance requirements, limit unnecessary costs, and reduce needless disputes, there should be a safe harbor for any methodology that establishes location in a similar manner required for any other tax compliance purpose.

Reference	Topic	Suggested Another Reliable Indicator
Schedule A, Part 3, B	Revenues from Finished Goods sold to Final Customers through an Independent Distributor	According to the Draft Rules, sales of tangible property to distributors (B2B sales) should be based on location data of final customers that companies obtain in the ordinary course of business, such as warranty registrations or electronic activations. Companies may not be able to join this location data with revenue data because, for example, this data may not be consumed by billing systems in the ordinary course of business. In that case, companies should be able to use this location data to compute an overall location ratio that can be applied with respect to all B2B sales at the company level instead of the customer level.
Schedule A, Part 5, B	Revenues from Online Advertising Services	The locations where ads are shown (impression location) by customer and legal entity could be considered as Another Reliable Indicator. Because the availability of impression location data may vary across products or customers and change over time in response to regulatory or industry practices, companies should be permitted to use the location data that is available in the ordinary course of business (e.g., device location, IP address location, location based on a combination of indicators / multifactor).

Reference	Topic	Suggested Another Reliable Indicator
		Other business models charge per click or by cost per acquisition, and impression data is not always available for search ads. Determination of the "viewer" of an online ads can also be done on the basis of how the advertiser is charged. This would allow companies to utilize existing billing systems (which likely have user geo information that is provided to the advertiser) when sourcing online ad revenue. For example, a search ad service provider bills its advertisers when a viewer clicks on an ad. Viewer location per click is tracked and provided to the advertiser. If the current rule is kept without considering these Another Reliable Indicators, new data systems that are only used for tax compliance would need to be implemented.
Schedule A, Part 5, G and H	Revenues from B2C and B2B services	Using VAT indicators can help improve the administrability of the rules and to benefit from tapping into existing, well-functioning systems familiar to taxpayers and tax administrations alike.
Schedule A, Part 5, H	Revenues from B2B services	Companies may have limited or no data available on the location where a customer uses B2B cloud services. Accordingly, to the extent that taxpayers are required to establish the place of use for B2B cloud services, taxpayers should be permitted to do so using data that is available in the ordinary course of business (e.g., location data on where a customer accesses certain cloud service interfaces to prevent fraud or abuse (interface data), other internal source of location or usage data that could be associated with the provision of cloud services). As in the case of ads, the most detailed level of analysis should be at the customer level by legal entity, where a customer is a customer as defined in a company's billing system. To the extent that location data is not available using a methodology covered by the safe harbor, companies should be able to establish location using billing address.

4.1.3. Other feedback

Reference	Topic	Issues	Recommendations
N.A.	Sourcing in general	In the ordinary course of business, companies may record certain adjustments to revenue (e.g., certain contra revenue transactions) with respect to no specific customers.	Companies should be permitted to prorate adjustments to revenue that are not recorded with respect to specific customers using a reasonable methodology such as by revenue or product, depending on how these adjustments are recorded in the ordinary course of business.

Reference	Topic	Issues	Recommendations
Schedule A, Part1, B	Supplementary Transactions	Use of a maximum revenue threshold of 5% of the total transaction value for all supplementary transactions seems unreasonably low and likely to produce significant unnecessary analysis of connected transactions as separate "Main Transactions" under these rules. Consider, for example, the sale of equipment with a multi-year service plan and freight. Combined these might easily exceed 5% of the value of a transaction.	Would recommend to increase the threshold to 20% to align this rule with the predominant character rule. We would also like to clarify that the threshold for defining a supplementary transaction is applied to specific main and supplementary transaction pair, rather than to the total transaction value of an MNE.
Schedule A, Part 1, Footnote 5	Revenue sourcing – online advertising	In the example on online advertising, the footnote alternates between referring to viewers and users as a way to source revenue.	Even when online advertising revenue is not directly tied to the number of views or clicks, revenue from online advertising services should be sourced by reference to the viewers of ads, clicks, or cost per acquisition, not a taxpayer's DAU by jurisdiction, which doesn't accurately reflect the revenue from an ad.
Schedule A, Part 10	Main Transaction (Part 1, No. 12)	Defining the Main Transaction as the 'primary profit-driver' of a multi-transaction bundle is suboptimal in several ways: a) it requires significant incremental computations which may be competitively sensitive, difficult to audit, and not otherwise required (cost allocations, etc.); b) It is at least in part subjective as many businesses consider profitability over a longer timeframe (consider razors & blades – ultimately the sale of a razor is necessary to produce any profits from the sale of blades, but an individual sale of blades may be more profitable than the first sale of the razor); c) because of the prior two factors it may be considered in some part subjective and therefore will produce unnecessary controversy.	Suggest defining the 'main transaction' on the basis of revenue (i.e., largest revenue item in bundle), linking determination to information already collected for other requirements of Pillar One and unambiguously. Where there is no separate pricing for components of a bundle, may revert to either primary product/service noted in invoice (typically X *with* or *and* denoting which is subsidiary to a main purpose).
Schedule A, Part 2	Internal Control Framework	Pillar One establishes a taxing nexus at $250K in sales, which is far below a materiality threshold for enterprises subject to Pillar One. The term 'Internal Control Framework' might be deemed to create SOX or other compliance expectations pegged to this number, which would potentially have ramifications beyond	The reference to the process for selection of reliable indicators and control framework should not be interpreted in a way that requires financial statement controls based on materiality as assessed against the Pillar One nexus thresholds.

Reference	Topic	Issues	Recommendations
		Pillar One (e.g., to what extent external auditors may include audit of Pillar One calculations in their audit scope).	
Schedule A, Part 2	Internal Control Framework	While the rules are formulated for specific items that produce Revenue, it should be made clear that an appropriately designed system does not require every source decision to be made at the invoice or individual transaction level.	Many source decisions are clear cut cases; others require judgment that cannot be made at the data input level of each invoice. Thus, the systems should be designed to sort the volume of transactions in a manner that allows the majority of clear cut cases to be grouped and sourcing automated and identify the exceptional cases for further review and analysis. We believe that systems are appropriate if they are designed to sort Revenue into the appropriate sourcing categories for that line of business.
Schedule A, Part 2.7	Covered Group "must demonstrate" that its internal control framework ensures that a Reliable Method is used.	**Part 2 Para 8** states that a Covered Group must demonstrate that its internal control framework ensures that a Reliable Method is used in accordance with this Part. It would be recommended to add specific language to ensure that i) facts and circumstances can be taken into account when assessing this requirement and ii) less substantial issues or shortcomings will not have the (unintended) consequence/ result that the requirements of para 8 would deemed not to be met.	Recommended to add the following wording (in bold) to the first sentence of para 8: "A Covered Group must **be able to sufficiently** demonstrate that its internal control framework ensures that a Reliable Method is used in accordance with this Part." Further recommended to clarify in the Commentary that: i. facts and circumstances can be taken into account when assessing this requirement and ii. less substantial shortcomings will not have the (unintended) consequence/ result that the requirements of para 8 would deemed not to be met.
Schedule A, Part 3.B	Revenues from finished goods sold to final	Part 3, Section B.3.b seems to result in tail-end revenues not identified as Regional Revenues being allocated solely to Low-Income Jurisdictions. Only if the Covered Group demonstrates	If this is not the intent, we suggest to add the following wording (in bold) to the Para B(3)(b):

Reference	Topic	Issues	Recommendations
	customers through an independent distributor	that Revenues did not arise in any Low-Income jurisdictions is the Global Allocation Key used. If this is not the intent, this should be clarified.	"In the event **and to extent** that the Covered Group demonstrates that Revenues did not arise in any Low Income Jurisdiction, the Tail-End Revenues shall be treated as arising in [a Jurisdiction] using the Global Allocation Key."
Schedule A, Part 4.A.3	Revenues from Components	This is implied in footnote 19, but the model rules as written do not provide or permit the use of a Regional Allocation Key in the absence of a reliable indicator. The rationale for applying a different hierarchy of potential allocations here from finished goods is unclear and adds unnecessary complexity.	Where a reliable indicator may not exist for component sales, it may nonetheless be possible to determine a Region for use of a Regional Allocation Key (i.e., Tier IV emissions engines are generally only sold in markets requiring Tier IV emissions certification).
Schedule A, Part 5, G	Revenues from Services to Consumers	The Consumer definition still falls short. What happens if Consumers are pooled (and not located in the same Jurisdiction) and services are performed (outside of the Market Jurisdictions) by the Covered Group to various Consumer(s) pool (e.g., retirement plan services, even extended families). In some cases, when Consumers are pooled, it may be possible to determine the billing address of each consumer based on information arising in the ordinary course of business. For example, a company could provide services to consumers through a third party's online platform, which processes transactions using the third party's billing system. The third party may provide a lump sum payment to the company for all transactions, with information on this lump sum broken out by the billing address country of consumers aggregated at the country, but not the customer, level. The company's revenues with respect to these services may reflect accruals (when transactions occur but before lump sum is received) and actuals (when lump sum is received). Accruals could be broken out by country based on the company's best estimate of the billing	We suggest that the pool be treated as the consumer to the extent that information regarding the billing address of the consumer is not available in the ordinary course of business. Or the Secretariat should clarify whether some of these pooled services may fall under the B2B category.

Reference	Topic	Issues	Recommendations
		address of the consumers using information available in the ordinary course of business. Actuals could be broken out by country based on the information from the third party. But, in other circumstances, when Consumers are pooled, this information may not be available in the ordinary course of business.	
Schedule A, Part 10	Non-Customer Revenues (Part 9, No. 62)	Why should, say, gains from the sale of one or more of a Covered Group's assets or businesses be reallocated applying Parts 3-8, at all? Same query regarding returns on financial assets, etc.?	Suggest that non-customer revenue be allocated using a pre-provided key. Such revenue is not easily attributed to revenue sourcing.
Schedule A, Part 2.4	Another Reliable Indicator	Part 2(3) describes what constitutes a "Reliable Indicator", while **Part 2(4)** defines what constitutes "Another Reliable Indicator". For this purpose, Part 2(4) refers both to certain rules in Article 5 and requirements in Paragraph 3. Two comments in this regard: • Another Reliable Indicator is defined in Part 2(4). However, the draft contains 21 cases where reference is made to "Another Reliable Indicator as defined in Part 2(3)". It seems that in all these cases reference should be made to Part 2(4)? In respect of Part 2(4) it seems likely that reference should be made to Paragraph 5 instead of Article 5?	Recommended to check reference to Part 2(3) and Article 5
Schedule A, Part 2.7	Limit jurisdictions/ situations covered by mandatory application of	**Para 7.** Describes an exceptional situation where the Covered Group must use either the Allocation Key or, in the absence of such an Allocation Key, the Global Allocation Key. These situations have been listed in subparagraphs (letters) a-c	It's recommended to add the following wording (in bold) to the first sentence of para 7: Notwithstanding paragraph 6, **and to the extent** where: [..]

Reference	Topic	Issues	Recommendations
	the (Global) Allocation Key under Para 7.	However, it's conceivable that these type of situations will only occur in relation to certain jurisdictions, while for other jurisdictions subparagraphs a-c would not be applicable (for instance because there is a reliable indicator for these jurisdictions, etc.). To make sure that these situations would not be covered under the exception of para 7, and the mandatory application of the (Global) Allocation Key, it would be recommended to add some additional wording to the first sentence of para 7.	

5. Additional Clarifications sought

Reference	Topic	Clarifications sought
Article [X]: Nexus test	Supplementary Transactions	Please clarify that supplementary transactions can be sourced according to the ratio of the source of the main transaction (i.e., supplementary transactions do not need to be separately sourced even though revenues technically need to be sourced transaction-by-transaction).
Schedule A, Part 2	Reliable method	It should be made clear that any of the suggested indicators in the document may be used for sourcing and that there is no priority or hierarchy given to any one reliable indicator over another.
Schedule A, Part 2, footnote 12	Definitions of "Customer" versus "Consumer"	Please clarify if the term "customer" in this footnote is intended to mean "customer" or "consumer".
Schedule A, Part 3	Tail-end revenue	Consequences of failure to take reasonable effort to reduce the 5% threshold are not clear – some companies may be more or less indifferent to the results of allocation such that use of global/regional allocation keys is far preferable from a cost standpoint to developing systems and architecture to collect, retain, and defend more specific sourcing data. (Particularly without any limitations on the ability of jurisdictions to challenge the use of a given reliable indicator by an MNE.)
Schedule A, Part 3	Tail-end revenue	For the avoidance of doubt, it would be good if it could be clarified in the Commentary that the revenues included for the 5% threshold doesn't include any "Non-customer Revenues", which can be deemed to arise in a jurisdiction in relation (proportion) to certain revenues, including Finished Goods (see for instance Page 25, Part 9).
Schedule A, Part 3	Finished Goods	It should be clarified how to determine the revenue sourcing when final customers of finished good conducts business by itself. For example, if a Covered Group, which is a manufacturer of transportation refrigeration equipment, sells an equipment to a transportation company, which is a customer, and the transportation company uses the equipment to provide transportation services to other customers, we understand that the final customer for the Covered Group is the transportation company. We would like to confirm whether our understanding is correct. Furthermore, if a Covered Group sells an equipment to a leasing company, which is a customer of the Covered Group, and the leasing company leases the equipment to a transportation company, which provides transportation services to other customers using the equipment, is it also correct to understand that the final customer for the Covered Group is the leasing company?
Schedule A, Part 3, B	Revenues from Finished Goods sold to Final	Please confirm that revenue refer to the Covered Group's sales to 3rd Party, and not sales made by independent distributors to Final Customers.

Reference	Topic	Clarifications sought
	Customers through an Independent Distributor	
Schedule A, Part 6	Revenues from IP	Please confirm that intragroup revenues from IP licensing are not counted as Revenues (as they are eliminated upon consolidation).
In general	Allocation keys	We would like to request the Secretariat share with us the draft allocation keys as part of the consultation process.

6. Processes and Timing

As mentioned in our introduction, we believe that robust Commentary, appropriate transition support, and a well-executed the ECP, will be needed to ensure a smooth implementation of Pillar One.

As we prepare for implementation and are working through the details of our transactions and systems, it would be helpful to have an "Expert Panel" whom we could contact to discuss specific issues and treatments to ensure our interpretations are reasonable. This would not replace the ECP but would at least provide timely guidance while we design our internal processes to minimize areas of uncertainty that could result in a challenge. It could be done as Q&A and published on a "no names" basis to provide consistent treatment in similar cases.

Another form of transition support could be a two-year transition period, in which an MNE should be able to rely upon its customer location information for sourcing (with a possible top up to developing market countries - as defined by, and using allocation keys provided by the Secretariat).

The ECP could be based on the first year's return but we recognize that it will take time to conclude. Therefore, there should be a "safe harbor" for those who engage in the ECP that includes a moratorium on audits/assessments of Pillar One Calculations until ECP is concluded, allows any necessary adjustments to be flowed through as part of the next return (i.e. no amended returns) without penalty or interest, and prevents later challenge to the same systems and methodology used in later returns based on the ECP conclusion. Confirmation of an agreement on application of sourcing to the MNE's facts should be a key element of the initial ECP, which must be completed (preferably one year) before an MNE is compelled to take further action, including any systems changes to accommodate such incremental information needs. Once the ECP is final, there should not be a need for document/data retention for a certain period of time (e.g., 3-4 years) or unless there are material business changes.

The proposed rules are complex, introduce subjectivity, and will be challenging to apply across companies and different product areas which will certainly have different data sets. This creates significant potential for disputes and uncertainty, so we reiterate the strong need for mandatory binding dispute prevention and resolution for ***all*** Participating Jurisdictions to ensure there will be effective resolution of definitional questions and determinations about reliability of data sources.