BUSINESSatOECD

4 March 2022

To: Tax Treaties, Transfer Pricing and Financial Transactions Division
Organisation for Economic Cooperation and Development
Centre for Tax Policy and Administration
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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 Tax Base Determinations"

Dear Secretariat Team,

Thank you for the opportunity to comment on the Draft Model Rules for Tax Base Determinations ("Draft Rules") on Pillar One of the project Addressing The Tax Challenges Of The Digitalization Of The Economy (the "Project"). As we have written to you before, we believe that the Pillar One rules should be principled, certain, practical and administrable. In that light, we offer our comments and responses to your request for input in this document.

We highlight four common themes in this pre-amble:

1. **The calculation of the Amount A tax base should be economically consistent** with the goal of identifying an MNE's residual profit from the conduct of its business in the ordinary course.
    a. Many businesses may experience long periods of investment in the early stages of a product life cycle and may otherwise experience cyclicality from year-to-year after they mature. Accordingly, we believe that the Amount A tax base should consider both unlimited loss and shortfall carryforwards to properly reflect when residual profits are realized.
    b. Similarly, the tax base should be adjusted to remove the distorting effect of one-off items such as the gain or loss that can arise in the disposition of a trade or business, whether in the form of sale of equity interests or in the form of sale of assets. These isolated events do not give rise to residual profits or losses that arise in the ordinary course of the MNE's business.
2. **The rules should clearly outline principles that determine what is to be included vs. excluded in the tax base** such as, for example, current footnote 3, which suggests gains or losses generated by another entity should be excluded. A principles-based approach is important because the Draft Rules allow the use of different financial accounting standards. Short of listing every item to include and exclude under every Qualifying Financial Accounting Standard (QFAS), providing an underlying rationale can help MNEs make informed decisions which would then be reviewed as part of the ECP. These principles should also deliver a coherent result when considering the operation of Pillar One as a whole. For example, if gains or losses generated by another entity should be excluded, then in the case of a consolidated but less than 100%-owned subsidiary, the

income or loss attributable to minority interests should not be included in the Amount A tax base as it does not belong to the MNE. Similarly to deliver a coherent result in calculating the total revenues to be used for the purposes of sourcing Amount A, the minority shareholders share of the revenues should be excluded.

3. **The Draft Rules create undue complexity and impracticality in certain areas** -- for example, business continuation test, restatement caps. We offer some alternative solutions and simplification suggestions for your consideration, again emphasizing the goal of Amount A is to broadly quantify the most profitable companies' residual profits for partial re-allocation, rather than to reach perfect precision on calculating whether an MNE has paid a sufficient amount of tax.
4. **Where possible, the Pillar One and Pillar Two tax bases should be aligned**, to avoid further complexity for businesses as they set up new systems to collect and report information under these new and untested rules. However, there are differences in purpose between the two pillars which will require divergences, and the Model Rules will need to take those into account – we note such cases throughout this document. We also note: as these Model Rules are a Secretariat draft, and because we do not know the shape and details of future building blocks, especially the all-important elimination rules, that it will be necessary to revisit these issues once those other rules are known, and the larger picture a little clearer.
    a. Where distinctions are made in the measurement of the tax base between Pillars One and Two, those differences should be clearly identified and grounded in principle. We observe that one such distinction is in the measurement of loss carryforwards. Whereas Pillar Two looks to specific tax loss carryforwards in the measurement of a country level tax base, Pillar One necessarily identifies loss carryforwards based on financial accounting concepts.
    b. The tax base for Amount A is driven off financial accounting information with limited adjustments, whereas actual tax is paid on a taxable income base. While we do not suggest that the Amount A tax base be adjusted to include all book-tax differences, we note that the rules for the elimination of double tax will need to address this fundamental mismatch. For example, due to this mismatch, the relieving jurisdiction may have insufficient taxable income to provide full relief. We offer some potential solutions to consider in Section 4.3.

We 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)

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We group our comments by the first three key principles outlined in our introduction:

1. The Amount A tax base should reflect an MNE's residual profit in its recurring business

1.1. Questions sought by OECD Secretariat

FN #	Input sought	Business feedback
12	The treatment of gains and losses associated with disposal of equity interests, and in particular on whether gains and losses from controlling interests shall be excluded from the tax base of Amount A.	The gains and losses associated with disposal of equity interests, including controlling interests, should be excluded from Amount A as such gains and losses are not a component of an MNE's normal course of business operation. Including such gains and losses can cause distortive effects on the profitability of relieving jurisdictions, and a jurisdiction could have its tax base reduced if a formulaic approach is adopted in identifying relieving jurisdictions. Implementing this would also partially reverse the effect of country policy decisions to provide relief from capital gains. This is regardless whether such gains or losses are included in operating income or non-operating income under the QFAS. We also believe gain/losses associated with disposal of a business via assets should be excluded – see more comments in Section 1.2 below.
17	The introduction of time limitations to loss carry-forward.	The rules should permit unlimited carryforward period (we understand there are no limitations under Pillar Two). • Amount A is designed to tax excess profit and this needs to be measured on a cumulative basis given the long business cycles of many industries (e.g., capital intensive businesses with long life assets). An unlimited or long carryforward period, combined with the earn-out approach, is necessary in order for the "relieving" jurisdictions to fully and appropriately recover the past investments and deductions they have granted relating to those losses. • A recent paper on this topic finds that "more than 96 percent of companies operating in the healthcare sector and nearly 80 percent of those in the information technology sector take longer than 10 years to break even."[1] As such, for many businesses, permitting anything less than 10 years of carryforward (and as little as 2 years) is not sufficient.

[1] "Treatment of Losses under OECD Pillars 1 and 2"; Dechsakulthorn, Glenn, Law and Myszka; Tax Notes International (July 20, 2020).

FN #	Input sought	Business feedback
		• The economic rationale for permitting loss carryforwards at all justifies no distinction based on the age of the losses. • The majority of the G20 currently allow unlimited (or at least a 10-year) carryforward of losses under domestic tax law. • We agree with the conclusion that a loss cannot be carried back for purposes of changing Amount A in prior years, if only for purposes of ensuring certainty for tax administrations. But in light of this asymmetry, we believe that a loss carryforward should not be time limited. If a limit is imposed, the Secretariat should provide a rationale for imposing such limit.
16	The operation of the current definition of "Eligible Prior Period" of a Covered Group. The proposed loss carry-forward regime currently follows a first-in-first-out approach.	Following the rationale listed above, there should be no limitation of prior period loss. This should be however optional (i.e., MNEs should not be forced to reconstruct the past if they decide not to do so as it may be practically very difficult). First-in-first-out would be a logical and administrable approach.
18	The recognition of losses incurred prior to the introduction of Amount A, and the introduction of time limitations for the carry-forward of such losses.	Pre-implementation losses should be carried forward for as long as post-implementation losses – there should be no distinction between these types of losses, particularly as the rules expressly provide that it is irrelevant (for both pre- and post-implementation losses) whether the Covered Group was a Covered Group in the prior Period (see paragraph (a) introduction in definition of Eligible Prior Period). Introducing a cut off does not align with economics as the losses of the past are paving the profits of the future which are captured by amount A.

1.2. Additional Comments from *Business at OECD* (BIAC) Tax Committee Members

Section	Topic	Issue	Recommendation
Title 5, Article 5, 2	Book-to-tax adjustments	The draft rules exclude the equity gain or loss, but not gain or loss arising from the disposition of assets representing a business.	We see no valid policy reason to treat differently a disposition of a trade or business that is expressed as a sale of shares vs. a sale of assets if they are treated similarly in measuring Financial Accounting Profit. The form of the sale shouldn't drive a different outcome in terms of the Amount A base. Any

Section	Topic	Issue	Recommendation
			difference in treatment should be based on a core principle underpinning the policy approach. A few other reasons to exclude gains/losses from both equity and asset disposals of a trade or business are as follows: 1. The Amount A tax base should only be based on recurring operations of the MNE. Capital gains/losses are unusual or infrequently occurring for most in-scope companies, as evidenced by the fact that they are generally not accounted for in top-line revenues. 2. It is common that the sales price in a business disposition is based on a discounted present value of future earnings potential. Inclusion of gains from such divestitures may lead to an over-allocation of residual returns to market countries since a significant element of the purchase price for the buyer is commonly assigned to goodwill. Absent an exclusion for the gain on the sale, both seller and buyer may report Amount A tax base for the same earnings. 3. The inclusion of a gain/loss will distort not only the tax base in a given year, but also the computation of Amount A, since a MNE's top line revenues will usually not include the proceeds from a business disposition. Accordingly, the return on sale measurement will be distorted (positive, in the case of a gain, or negatively in the case of a loss), and with that, the excess return subject to Amount A reallocation. 4. There is a further potential distortion in the allocation of Amount A, as the net gain or loss from the business disposition will (positively or negatively) skew the tax base of the selling entity (ies). 5. If the capital gain has benefitted from participation exemption, then this would result in incremental tax for the group and an undermining of the tax policy of the relevant country to exempt capital gains through the participation exemption. 6. Many business transfers take the form of asset deals rather than share transactions for a variety of reasons, including the common situation

Section	Topic	Issue	Recommendation
			where a particular business division does not comprise a separate holding company and subsidiaries, but shares its corporate structure with other divisions either wholly or in part or situations where there may be contingent liabilities attaching to the historical corporate entities, which a purchaser would not wish to assume. 7. The same practical difficulties (such as why market countries would be entitled to a share of profits on an investment unrelated to those countries, which country would surrender, how do we treat earn out payments, etc.) would arise from a sale of assets treated as a business combination for IFRS as for a sale of shares treated as a business combination.
Title 5, Article 5, 3	Net Losses	The consultation document does not expressly contain the concept of profit shortfalls, which was in the October 2020 Pillar One Blueprint. As the intent of Pillar One is to amend taxing rights to residual profits, it is important that residual profits be appropriately measured over time. Similar to absolute losses, many in-scope businesses may have accounting periods in which they generate residual profits and others in which they fall short. Failure to provide a profit-shortfall carryforward mechanism will result in disparate treatment of cyclical businesses (and of countries whose economies are disproportionately concentrated in those industries), as over time a significant amount of	This profit shortfall is logical, and should be included in the MLC and Model Rules. Regular domestic tax regimes tax profits above a 0% profit margin, so that 0% margin is the dividing line below which domestic losses and loss carryforwards are defined. Amount A taxes profits above a higher profit margin (10%) so that higher profit margin should be the dividing line below which Amount A losses and loss carryforwards are defined. Further, as companies are unable to carry back losses, we believe companies should be able to include profit shortfall. Determination of an excess tax base without recognizing profit shortfalls will create distortive outcomes to cyclical businesses and to revenues of jurisdictions whose MNEs are disproportionately focused on such businesses.

Section	Topic	Issue	Recommendation
		non-residual profit would be subject to amount A reallocation.	

2. The Amount A tax base should not include profits that are realized by another MNE

2.1. Additional Comments from Business at OECD (BIAC) Tax Committee Members

Section	Topic	Issue	Recommendation
Title 9; Consolidated Financial Statements and related definitions	Definition of Financial Accounting Profit (or Loss)	The current definition of Financial Accounting Profit (or Loss) (essentially net income before OCI) needs to be further clarified. If not, it can create inconsistencies between IFRS and another QFAS. For example, under US GAAP Net Income is reduced by income attributable to Non-Controlling Interest and then the final line is Net Income attributable to Shareholders. Under IFRS Net income is the final line and then underneath it is split into Net income attributable to Shareholders and Net Income attributable to Non-Controlling Interests.	Net Income should NOT include the income "deriving from gains or losses generated by another entity" (e.g., another MNE, public shareholders). It should be made clear that the starting point of the tax base is "Net Income Attributable to Shareholders" regardless of the presentation required by the applicable accounting standard.
Title 9; Book-to-tax adjustments, restatement adjustments, and related definitions	Definition of Financial Accounting Profit (or Loss)	The definition of Financial Accounting Profit (or Loss) should be designed so that "the tax base of a Covered Group does not include specified gains or losses deriving from gains or losses generated by another entity."	The minority share of the income that is included in net income but belongs to the minority shareholder should be excluded from Financial Accounting Profit (or Loss).[2] Similarly, it appears reasonable to include the profit or loss from controlling interests in a JV where that JV is included in the Consolidated Financial Statements**, provided** the profit or loss for the Non-controlling Interests is excluded from Financial Accounting Profit (or Loss). For example: Ultimate parent entity (UPE) owns a 60% controlling share in Company A and includes Company A in its consolidated financial statements. Company A is 40% owned by public shareholders. Company A does not meet

[2] Pillar Two takes this approach as it effectively removes minority interests through the allocation mechanism.

Section	Topic	Issue	Recommendation
			Amount A thresholds. Under the current approach, UPE would include 100% of Company A's profits in its Amount A calculation, therefore effectively subjecting Company A to Amount A even though it does not meet the threshold. We recommend that UPE excludes profits owned by the minority shareholders from its Amount A tax base. If gains or losses deriving from gains or losses generated by another entity is included in the tax base in any way, it would cause further distortion in the Amount A calculation: ● If a formulaic approach is adopted when identifying the relieving jurisdiction(s), the share of profit generated by another unrelated entity can artificially inflate a jurisdiction's residual profits. In the above example, Company A's jurisdiction would receive 100% of Company A's residual profit rather than just the 60% that was realized by UPE. Considerations need to be given on the end-to-end implication of including profits that are not earned by an MNE's shareholders. Gains and losses recorded under the cost method of accounting should be treated similarly.
Title 9; Book-to-tax adjustments, restatement adjustments, and related definitions	Equity Gain or Loss	It is not clear what is the intended meaning of "joint control" under part (c) of the definition – for example, an MNE has a 50:50 JV where it does not control, so its JV partner consolidates 100% and the MNE equity accounts for 50%. Is that the scenario envisaged here, or is it only targeting the relatively narrow scenarios where there is a 50:50 JV where neither controls and both parties equity account for 50%?	We would like this issue to be further explained. Where there is a 50:50 JV where neither party controls and both parties equity account for 50%, the same treatment for profits/losses accounted under the equity method should apply.

3. Practicality and Administrability

3.1. Questions sought by OECD Secretariat

FN #	Input sought	Business feedback
11	Input on an applicable cap on the Eligible Restatement Adjustment for the Period. The level of the cap will be subject to further analysis to balance competing objectives of simplicity and avoidance of excessive single year impacts.	In response we note that we do not see a basis in principle for limiting adjustments arising from restatements to 0.5% of revenues in a given year. • We observe that financial restatements typically reduce, not increase Financial Accounting Income. Accordingly, we recognize that a restatement above this threshold is much more likely to decrease, rather than increase the Amount A base in a given year. • However, consistent with our observations concerning loss and shortfall carryforwards in the measurement of global residual returns, we believe that the impact of restatements should be given full effect in the first year available without limitation. Otherwise, the result distorts cumulative residual returns earned to date. • The cap will increase financial accounting complexities. It is likely that a Restatement will trigger tax consequences due to a revised allocation of tax basis between receiving countries and relieving jurisdictions. When the Restatement is booked, all these impacts can be booked in current tax. Should there be a cap and a carry forward mechanism, deferred tax would have to be booked and followed over time. Not having a cap would simplify things. • Accordingly, we recommend removing the cap for these restatements, and the consequential administrative cost and complexity. • If policymakers insist on retaining a cap to mitigate the near-term impact on Amount A, it should be based on percentage of the Amount A otherwise measured in the year, and not on revenue since revenues are only used for scoping purposes. At present, the limitation represents a small and variable fraction of the Amount A in a given year. For instance, the proposed cap would represent 0.125% of sales, which would be equivalent to 2.5% of the Amount A otherwise due for an MNE with a 30% pre-tax book income margin. We believe that this figure is too low and will lead to additional administration in carrying over the balance of the restatement. We suggest that the cap be reframed to represent 20% of the Amount A in a

FN #	Input sought	Business feedback
		given year. In the example above of an MNE with a 30% pre-tax book income margin, it would therefore represent 1% point out of a total of 5% points of Amount A otherwise due.
13	The operation of the Business Continuity Conditions test (e.g., assessing whether one business is "the same or similar" to another), in particular on the relevant criteria to be considered and the time periods for its prospective and retrospective application.	The Business Continuation Conditions test is complex and highly subjective (at least at this stage). For Covered Groups, acquisitions or divestments are driven by operational objectives and should be presumed as meeting the requirement. Imposing a 3-year freeze on activities (one year before and two years afterwards) makes little economic sense as groups tend to integrate acquisition to realize synergies. It also imposes considerable burden on the taxpayer to track and evaluate same or similar business across the designated period. Depending on the criteria, it may be impossible to prove the business continuation. Further, in many acquisitions, the acquired entity/assets are converted from being a principal in its own right, to undertaking similar business activities but compensated within the acquirer's group on a limited risk basis (e.g., cost-plus). Some recommendations for addressing these issues are below: • A presumption of business continuity and a claw back mechanism if more than 50% of the assets acquired in the business combination are divested (not impaired) in a 2-year window following acquisition. The test should look to the underlying activities, e.g., R&D, rather than the specific way those activities are remunerated.
19	The operation of the current definition of "Eligible Prior Period" of a Transferred Entity or Group or a Predecessor Group	See comments for footnote 16. Also, this is all the more complex in the case of an acquired group (that may not have been a Covered Group) and where data may or may not have been maintained in the right level of details. In these cases we suggest allowing the Covered Group to take into consideration, as an exception, the pure IFRS loss without any adjustments.

3.2. Additional Comments from Business at OECD (BIAC) Tax Committee Members

Section	Topic	Issue	Recommendation
Title 9; Other definitions	Business combinations and divisions	We see huge complexity in the draft rules for dealing with business combinations and demergers.	A simplification approach would be to have a materiality threshold and/or a taxpayer elect to make the additional calculations only if the taxpayer will potentially benefit from a relief.

4. Other Comments

4.1. Questions sought by OECD Secretariat

FN #	Input sought	Business feedback
6	The operation of "Transferred Losses" rules, as well as on the categories of business reorganizations that should be taken into consideration under this rule.	If the Acquired Company was NOT part of a Covered Group, its losses should be able to reduce Amount A even if they are not large enough to create a Net Loss in the Buyer's Covered Group. The current draft only adds the Transferred Losses to the "Net Loss of the Covered Group". We do not believe that there should be a distinction made between a profitable Covered Group that acquires a new business startup with losses and a profitable Covered Group that incurs the losses itself in the creation of the business startup. In both cases, such investment should be considered in the calculation of Amount A. Footnote 20 & 21 appear to require audited financial statements of Transferred Entity. Some member have commented that acquired companies are traditionally much smaller than the acquiring Covered Group, and they may not prepare audited financial statements even if they receive funding. We recommend that the rules provide an exception for the audited financial statement requirement if a Transferred Entity would not, on its own, be required to prepare audited financial statements.
9	What is the most appropriate approach to be adopted for Covered Groups whose GAAP was not compliant with Qualifying Financial Accounting Standard (QFAS).	In general, an MNE that meets the scope of Amount A would be listed on a stock exchange and be required to prepare a QFAS. Therefore, we suggest that the rules do not mandate Covered Groups to effectively calculate a QFAS compliant tax base to determine whether a material competitive distortion exists. Instead, these cases can be addressed in the early certainty process.
14a	The categories of operations that should fall in the definition of an Eligible Business Combination, other categories of business combinations.	We appreciate that the OECD has treated stock and asset deals similarly for purposes of Transferred Losses to ensure the form of the deal does not change the outcome under Amount A. We look forward to further guidance on how an asset deal would qualify, but note that, in the example provided, it suggests that the target company would cease to exist. Since a formal liquidation may very well occur in a different period than the acquisition (liquidations often can involve time-consuming steps), a plan to liquidate or some certification of plans to liquidate or otherwise discontinue operations should be sufficient.

FN #	Input sought	Business feedback
14b	Whether a portion of losses should transfer on a transfer of a portion of the Group	A portion of losses should be allowed to transfer along with a portion of a transferred Group if circumstances permit. These losses could have been generated partially from the underlying assets of the transferred entity(ies). That said, accurate tracking of losses for a transfer of the portion of the Group can be very difficult from a practical perspective. As segmentation is not being used in Pillar One (and anyway, IFRS segmentation may not in all cases coincide nicely with divested business), there is no business line tracking of IFRS numbers. Therefore, transferring a portion of losses should be elective.
15	How to define an Eligible Division, and whether other types of divisions should be included (e.g., operations where a Group spins off part of its business to its shareholders (forming a new Group), but continues to exist as the same Group).	We recognize there is additional complexity arising from the carry-forward of losses or shortfalls, but we understand it is warranted given the policy objective. We believe the definition of Eligible Divisions should be broadened to include the spin-off, but whether a portion of the losses can be transferred to the buyer should be elective if the spin-off is a qualified business restructuring.
23	Proposed method to calculate, and allocate, the amount of Transferred Losses arising from an Eligible Division based on net asset value, as well as on the method to determine the net asset value.	We received varying feedback on this topic from our members. Therefore, we suggest that MNEs be allowed to choose the most appropriate indicator of net asset value based on its particular circumstances, as long as such indicators are 1) agreed upon by both parties, are supported by measurable data, and the portions add up to 100%. That selection would then be reviewed as part of ECP. A few suggestions of reliable measures are below: - Items directly available in the consolidated financial statements; - For other businesses, net asset values do not reflect the value of self-developed intangible. The fair market value would be more appropriate; or - Relative market capitalization of the new units via stock split.

4.2. Additional Comments from Business at OECD (BIAC) Tax Committee Members

Section	Topic	Issue	Recommendation
N/A	Stock-based compensation	N/A	Pillar Two allows an election to substitute the amount allowed as a deduction in the computation of its taxable income in its location for the amount expensed in its financial accounts for a cost or expense for stock-based compensation. This same election should be available for Pillar One.
Background	General comments (process)	There are areas where the rules say that more guidance will be provided (e.g., Eligible Restatements, Business Continuity Conditions, time limitations for loss carryforwards). This will create legal uncertainty as we understand that only the Model Rules will be inserted in the Multilateral Convention, leaving room for interpretation.	Businesses should have another chance to comment on those more detailed rules once they are available, in particular to make sure we are balancing the need for administrability and the avoidance of anomalous results. Clarification is needed where the rules state jurisdictions will be free to adapt these Model Rules. Although the rules also recognize the need for consistency, it needs to be clear that the rules for tax base cannot diverge in different countries in ways that would result in double taxation.
Title 5, Article 5, 2.a.iv.	Policy Disallowed Expenses	The definition for Policy Disallowed Expenses is unclear or excessively wide. • Often the event that causes a Policy Disallowed Expense will be disputed (e.g., in litigation or regulatory proceedings). • We are concerned that if the final rules contain a disallowance of individual items of expense based on behaviors that governments deem "undesirable", it will introduce significant complexity	Policy-related determinations vary significantly among countries, so any adjustments in this area need to be extremely narrow/limited (Penalties **imposed by a government** or those that are highly illegal as exemplified in the Public Consultation Document). For instance, entertainment expenses and donations may not be deductible for tax purposes even though they are recorded as expenses for accounting purposes, but such individual book-to-tax adjustments should not be required when determining the tax base of Amount A. This boundary should be made more clearly in the final model rules, and explained further in the Commentary with examples. The calculation of Amount A is done on a global consolidation basis. Any other attempt to isolate specific expenses in certain

Section	Topic	Issue	Recommendation
		and result in undue burden in the calculation of Amount A. • The current definition of Policy Disallowed Expenses is wider than the definition under Pillar Two (including the threshold).	jurisdictions would be impossible except for very unusual, rare and material items. Also, the ability for individual jurisdictions to adapt for domestic considerations and practices will result in a process which is inconsistent and not administrable. It would also be inappropriate to use these rules to set new tax policies that supersede country policies. If an expense is disallowed and therefore excluded from tax base in a prior year, any reversal in a later year if an MNE successfully challenges such expense must not result in an additional income to the tax base (i.e., the impact should be excluded in each case whether decreasing or increasing profitability to ensure parity and avoid anomalous results). Commercial contract fines or penalties should be ruled out.
Title 9; Definitions	Definition of "Covered Group" in FN 7	"Covered Group" is broadly defined to be a collection of entities controlled by an Ultimate Parent Entity. For Pillar Two, the MNE Group are those entities by virtue of ownership or control such that the assets, liabilities, income, expenses and cash flows of those entities are included in the Consolidated Financial Statements.	Recommendation that clarity is provided that the definition of Group is the same Group for the purposes of Pillar Two.
Title 9; Book-to-tax adjustments, restatement adjustments, and related definitions	Restatement adjustments	Restatements are recognized in year of change. Generally the approach is to restate opening balances, with the restatement impact reflected in retained earnings. We would like to clarify if this means the year of change is the year that the opening balances are adjusted – e.g., a restatement at 1/1/21 would be a change in calendar year 2021.	N/A.

Section	Topic	Issue	Recommendation
Title 9; Book-to-tax adjustments, restatement adjustments, and related definitions	Definition of "tax expense"	We are pleased to see that interest on tax reserves is recognized as commonly carried in the income tax line in US GAAP financial statements. Thus, the interest component does not appear to be added back to net income. As a result, we note that the tax base may vary slightly from published pre-tax book income by this tax interest element.	N/A. We would also like to clarify that Tax Expense (or Tax Income) does not include interest charges for payments on tax assessment consistent with interest charges for late payment of tax. If excluded from tax expense, we would like to confirm they will be deducted from the Amount A tax base. We would also like to clarify the treatment of tax penalties. Under some QFAS, some or all tax penalties may not be included in income tax expense but are 'above the line'.

4.3. Coordination with Elimination of Double Taxation

We note a few potential issues that may arise in the Elimination of Double Taxation building block.

Topic	Issue	Recommendation
Exit taxes	The draft rule does not clarify that Amount A will not result in exit taxes in the relieving jurisdictions (i.e., under the concept that a stream of income has been permanently removed from an investment hub country by the operation of Amount A).	We suggest adding to the final rules that Amount A allocations should not give rise to exit taxes in the relieving jurisdictions – either under the Tax Base or the Elimination of Double Taxation building block.
Book-tax differences	Book-tax differences can cause a relieving jurisdiction (identified via Amount A's calculation) to have no/little actual taxable income. These differences can arise from, for example: • Tax loss carry-forward with no book loss carry-forward • Capital intensive industries or industries with material timing differences (e.g., accelerated tax depreciation of tangible assets)	A few proposed solutions: • Calculating relieving jurisdiction profits using taxable income rather than financial income • Limit the reallocation to the extent of any tax paid in the source country. I.e., if the source country is in a tax loss position, there is no reallocation, even if there is accounting profit.

Topic	Issue	Recommendation
		• Consider a mechanism to address material timing differences that result in tax losses (e.g., a credit mechanism available in the source country with unlimited carry forward).