

PUBLIC CONSULTATION DOCUMENT

Pillar One – Amount A: Draft Model Rules for Tax Base Determinations

18 February 2022 – 4 March 2022



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Background

Introduction

Following years of intensive negotiations to update and fundamentally reform international tax rules, 137 members of the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) joined the [Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy](#) (the Statement) released in October 2021. The Statement sets out the political agreement on the key components of Pillar One and Pillar Two.

Amount A of Pillar One has been developed as part of the solution for addressing the tax challenges arising from the digitalisation of the economy. It introduces a new taxing right over a portion of the profit of large and highly profitable enterprises (hereafter, “Covered Groups”) for jurisdictions in which goods or services are supplied or consumers are located (hereafter, “market jurisdictions”).

The Inclusive Framework has mandated the Task Force on the Digital Economy (TFDE) – a subsidiary body – to advance the work needed to implement Amount A. In particular, the TFDE has been charged with developing the Multilateral Convention (MLC) and its Explanatory Statement as well as the Model Rules for Domestic Legislation (Model Rules) and related Commentary through which Amount A will be implemented.

Model Rules

The Model Rules, once finalised, will reflect the substantive agreement of the members of the Inclusive Framework on the functioning of Amount A and will serve as the basis for the substantive provisions that will be included in the MLC. The Model Rules are also being developed to provide a template that jurisdictions could use as the basis to give effect to the new taxing rights over Amount A in their domestic legislation. They will be supported by a commentary. Jurisdictions will be free to adapt these Model Rules to reflect their own constitutional law, legal systems, and domestic considerations and practices for structure and wording of legislation as required, whilst ensuring implementation is consistent in substance with the agreed technical provisions governing the application of the new taxing rights.

The Model Rules will cover all aspects of Amount A that would be translated into domestic law. They will consist of different titles. This document contains the sections on tax base determinations (which are currently Title 5) as well as relevant definitions (currently included in Title 9) that are referenced in the sections on tax base determinations.

Model Rules on Tax Base Determination

This document contains the draft Model Rules for tax base determinations, which would be contained in Title 5 of the Model Rules described above. It also contains relevant definitions (currently included in Title 9) that are referenced in the sections on tax base determinations. Both the Model Rules for tax base determinations and the relevant definitions will be translated into the MLC and Explanatory Statement.

The Model Rules on Tax Base are designed to calculate the profit (or loss) of a Covered Group that will be used for Amount A calculation purposes. The tax base is therefore the measure of profit that forms the basis for partial reallocation under Amount A rules.

Given that Amount A is a new taxing right that is determined based on the profits of a group (rather than on a separate entity basis), it is necessary to use consolidated group financial accounts as the starting point for computing the Amount A tax base. This approach also has the advantage that the Amount A tax base is less affected by controlled transactions. The draft Model Rules in this document do not

include the tax base rules that will be necessary for Covered Groups that are subject to segmentation for Amount A purposes, which will be released at a later date.

Under the Model Rules, Covered Groups would be required to calculate their profits using Qualifying Financial Accounting Standards (which are defined in the Model Rules) to ensure that the profit that is applied for Amount A purposes is not impacted by accounting practices that do not align with common practice. Given that the scope of Amount A includes only a limited number of large and highly profitable enterprises, it is anticipated that most such Covered Groups will be preparing financial accounts using these standards at present for commercial or regulatory purposes. Further, the financial statements of Covered Groups would have to be subject to external audit, thus providing a reliable source of information that is typically readily available to tax administrations.

Subject to specified exclusions, all items within the consolidated P&L statement will be taken into consideration to determine the tax base of the Covered Group. This means the computation of the Amount A tax base will start from the bottom line figure of the P&L statement (i.e. the total for profit or loss). From this point, certain book-to-tax adjustments will be made (such as the deduction of certain items of income and the adding back of certain expenses) to arrive at a standardised Adjusted Profit Before Tax figure. The adjustments adopted reflect instances where the goals of accounting standards and Amount A may differ in some points, including occasions where adjustment is required to prevent potential double counting of income or to prevent the deduction of specified expenses for policy reasons. For ease of administration and compliance, these adjustments will be kept to a minimum in order to limit complexity, and align where possible with adjustments under Pillar Two.

Tax base is also subject to adjustment with respect to profit (or loss) restatements in relation to prior periods. Subject to certain limitations, restatements required under accounting rules are attributed to the tax base of the Covered Group in the period that the restatement is identified and recognised, rather than going back and recalculating tax base for prior closed periods. This is expected to be consistent with the approach taken in relation to other elements of the Amount A calculation.

To limit any reallocation under Amount A to economic profit, tax base determination is also subject to loss carry forward rules. These rules require that unrelieved losses of a Covered Group incurred in a prior period (hereafter, "Net Losses") are carried forward and offset against any subsequent profit of that Group, following an 'earn-out' mechanism. Specific rules apply in a number of instances, such as for (a) pre-implementation losses (i.e. Net Losses incurred prior to the introduction of Amount A), and (b) losses transferred following certain types of defined business reorganisations.

The Model Rules on tax base determination also consider the introduction of time limitations to the utilisation of Net Losses, a question that is still under discussion within the TFDE.

Public Consultation instructions

This is a working document released by the OECD Secretariat for the purposes of obtaining input from stakeholders. It does not reflect the final views of the Inclusive Framework members. It presents the work undertaken to date, which has reached a sufficient level of detail and stability such that it is now suitable for consultation. The TFDE has agreed that this working version can be released on the basis that it is without prejudice to the final agreement. As such, while the rules are intended to illustrate the framework for tax base determinations, and work-in-progress approach to a number of the rules, further changes may be made. Further changes may also be needed once the scope exclusions for Regulated Financial Services have been agreed, to ensure that the tax base determinations rules appropriately address the specificities of certain non-regulated financial services. Thus, the release of this document reflects consensus within the TFDE as a procedural matter that public comments should be sought at this time, but does not reflect consensus within the TFDE regarding the substance of the document.

Comments are sought with respect to the tax base determination rules in this document. Where relevant, input should refer to the relevant section of the rules. While comments are invited on any aspect of the rules, input will be most helpful where it explains the additional guidance that would be needed to apply the rules to the circumstances of a particular type of business, as well as input on whether anything is missing or incomplete in the rules.

Interested parties are invited to send their comments on this discussion draft before **4 March, 2022**. These comments will be examined at the following meeting of the TFDE.

Comments on this discussion draft should be sent electronically (in Word format) by email to tfde@oecd.org and may be addressed to: Tax Treaties, Transfer Pricing and Financial Transactions Division OECD/CTPA.

Please note that all written comments received will be made publicly available* on the OECD website. Comments submitted in the name of a collective “grouping” or “coalition”, or by any person submitting comments on behalf of another person or group of persons, should identify all enterprises or individuals who are members of that collective group, or the person(s) on whose behalf the commentator(s) are acting.

* See corrigendum notice: www.oecd.org/tax/beps/corrigendum-public-consultation-tax-base-determination.pdf

General Articles and Definitions

Title 5: Determination and allocation of taxable profit

Article 5: Determination of the Adjusted Profit Before Tax of a Covered Group

1. For the purposes of this Act, the Adjusted Profit Before Tax for a Period is the Financial Accounting Profit (or Loss) of the Covered Group after making the book-to-tax adjustments and restatement adjustments set out in paragraph 2 of this Article and deducting any Net Losses calculated in accordance with paragraph 3 of this Article.
2. For the purposes of making the book-to-tax adjustments and restatement adjustments under paragraph 1 of this Article,
 - a. The inclusion of the following items of income and the deduction of the following expenses in the computation of the Financial Accounting Profit (or Loss) of the Period will be reversed:
 - i. Tax Expense (or Tax Income)¹;
 - ii. Dividends²;
 - iii. Equity Gain (or Loss)³; and
 - iv. Policy Disallowed Expenses⁴.
 - b. Eligible Restatement Adjustment for the Period will be made to the Financial Accounting Profit (or Loss) of the Covered Group in the Period.
3. For the purposes of deducting Net Losses under paragraph 1 of this Article,
 - a. Net Losses for a Period constitute the total amount of cumulative Financial Accounting Losses that exceeds the total amount of cumulative Financial Accounting Profits of the Covered Group over

¹ Commentaries will elaborate on the practical application of the exclusion of tax expense (or tax income). This item is excluded on the basis that income tax expenses are usually not deductible for corporate income tax purposes in Inclusive Framework jurisdictions.

² Commentaries will elaborate on the practical application of the exclusion of dividend income. This item is excluded on the basis that dividends are excluded, in whole or in part, from the corporate income tax base in many Inclusive Framework jurisdictions, or in other instances the recipient benefits from tax relief (such as indirect credit for taxes paid).

³ Commentaries will elaborate on the practical application of the exclusion of specified equity gains and loss. This item is excluded to ensure that the tax base of a Covered Group does not include specified gains or losses deriving from gains or losses generated by another entity.

⁴ Commentaries will elaborate on the practical application of the exclusion of policy disallowed expenses. This item is excluded as it related to behaviours that governments regard as undesirable but are treated as expenses under financial accounting rules.

the Eligible Prior Period(s), after making the adjustments set out in paragraph 2 of this Article for each Eligible Prior Period.⁵

- b. Where an Eligible Business Combination or an Eligible Division occurred, and if the Business Continuity Conditions are met, the related Transferred Losses, if any, are added to the Net Losses of the Covered Group.⁶

Title 9: Definitions

The definitions included in this Title apply for the purposes of this Act, including its Schedules.⁷

Consolidated Financial Statements and related definitions

“Consolidated Financial Statements” means the audited financial statements prepared by the Ultimate Parent Entity under a Qualifying Financial Accounting Standard in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and other Entities are presented as those of a single economic entity.

“Equivalent Financial Accounting Standards” means the GAAP of Australia, Brazil, Canada, Member States of the European Union, Member States of the European Economic Area, Hong Kong (China), Japan, Mexico, New Zealand,

⁵ Commentaries will clarify the application of this draft provision. The current draft sets out the general rule for the calculation of unrelieved losses from prior Periods (referred to as “Net Losses”) to be carried forward and deducted under paragraph 1 of Article 5 in the calculation of a Covered Group’s Adjusted PBT for a Period. The rule is based on an “earn-out” mechanism that has three steps: the identification of the Eligible Prior Period(s) of the Covered Group (if any), the calculation of the amount of Net Losses by reference to those Eligible Prior Period(s); and the carry forward and deduction of such Net Losses in the current Period. For this purpose, the term Eligible Prior Period is defined in Title 9 (Definitions). If applicable, Net Losses may also comprise Transferred Losses pursuant to sub-paragraph (b). Separately, it should be noted that discussions are ongoing within the TFDE on the development of an averaging mechanism for the scope criteria, which is not shown here.

⁶ Commentaries will clarify the application of this draft provision. The current draft sets out specific conditions under which a Covered Group may, following a business reorganisation, recognise losses incurred by an Entity or Group that was not part of the Covered Group at the time such losses were incurred (referred to as “Transferred Losses”). Under the current draft, two categories of business reorganisations may give rise to Transferred Losses: Eligible Business Combinations and Eligible Divisions (defined terms under Title 9 (Definitions)). These are two categories of business reorganisations in which, absent any special rules, unrelieved losses (if any) would ‘disappear’ for the purposes of Amount A even though the relevant business activities would be continued (in the hands of a different taxpayer). The draft rules on the transfer of losses therefore seek to ensure that the unrelieved losses (if any) can continue to be carried forward where this is consistent with the objectives of the Amount A rules. It should be noted that the identification of the specific categories of business reorganisations that could give rise to Transferred Losses is still under discussion (see below Footnotes 14 and 15). Input from stakeholders is therefore welcomed on the operation of these rules, as well as on the categories of business reorganisations that should be taken into consideration under this rule.

⁷ The terms “Covered Group”, “Entity”, “Group”, “Group Entity”, and “Ultimate Parent Entity” will be defined terms for the purposes of the Model Rules (definitions not shown here). Broadly speaking, a Group will be a collection of Group Entities controlled by a Ultimate Parent Entity, and a Covered Group will be a Group that meets the scope criteria of Amount A (scope criteria not shown here).

the People’s Republic of China, the Republic of India, the Republic of Korea, Russia, Singapore, Switzerland, the United Kingdom, and the United States of America.⁸

“Financial Accounting Profit (or Loss)” means the profit or loss set out in the Consolidated Financial Statements of the Ultimate Parent Entity taking into account all income and expenses of the Group except for those items reported as other comprehensive income.

“GAAP” means the generally accepted accounting principles as adopted by the body with legal authority in the relevant tax jurisdiction to prescribe, establish, or accept accounting standards for financial reporting purposes.

“IFRS” means the International Financial Reporting Standards. It includes IFRS as adopted in Regulation (EC) No 1126/2008, as amended, and IFRS as adopted by the body with legal authority in the relevant tax jurisdiction to prescribe, establish, or accept accounting standards for financial reporting purposes.

“Qualifying Financial Accounting Standards” means IFRS and Equivalent Financial Accounting Standards.⁹

Book-to-tax adjustments, restatement adjustments, and related definitions

“Carried Forward Restatement Adjustment Balance” means the sum of all Eligible Restatements in prior Periods that have not been applied to the Adjusted Profit Before Tax in prior periods due to the cap included in the definition of Eligible Restatement Adjustment for the Period.

“Dividends” means dividends or distributions included in calculating the Financial Accounting Profit (or Loss) of a Group under a Qualifying Financial Accounting Standard that are received or accrued in respect of an Ownership Interest.

“Eligible Restatement” means the sum of all Restatements of the Covered Group, identified and recognised in a Period, that satisfy the criteria listed below.

⁸ The definition of Equivalent Financial Accounting Standards has been drafted to ensure consistency with equivalent definition applied in the context of Pillar Two. GAAP of other countries may subsequently be considered for inclusion in this definition.

⁹ The Tax Base Model Rules have been drafted on the basis that all Covered Groups would be required to prepare Tax Base calculations under Qualifying Financial Accounting Standards (QFAS). Delegates of the Inclusive Framework have contemplated an option where Covered Groups could prepare Tax Base calculations using the Covered Group’s GAAP in cases where that GAAP was not compliant with QFAS, however this approach is not reflected here. Under an approach where Covered Group’s GAAP could be used, the Covered Group would have been required to determine whether that Covered Group’s GAAP created any material competitive distortion when compared with IFRS (e.g. greater than € 100m), and if so an adjustment to the Tax Base would have been required to reverse this distortion. The approach set out would instead require use of QFAS on the basis that most in scope Covered Groups will be using QFAS already. Further, if the Covered Group’s non-QFAS GAAP were permitted with material competitive distortion check, the Covered Group would be required to effectively calculate a QFAS compliant tax base to determine whether a material competitive distortion exists, and on this basis the requirement to use QFAS is unlikely to impose further compliance burden on Covered Groups. Input from stakeholders is welcomed on the most appropriate approach to be adopted.

- (a) The Restatement(s) would have affected the calculation of Adjusted Profit Before Tax of the Restated Period, determined under paragraph 1 of Article 5, if recognised in the Restated Period; and would have affected the amount of allocable profit in that period or a subsequent period; and
- (b) The Restated Period (i) meets the definition of an Eligible Prior Period, or (ii) would meet the definition of an Eligible Prior Period if the definition of Eligible Prior Period were amended to remove any requirement that an unapplied Financial Accounting Loss must be observed.

For the avoidance of doubt, where a Restatement is divisible into separate components and only some of those components satisfy the criteria listed above, the Eligible Restatement will be determined as the relevant component only.¹⁰

“Eligible Restatement Adjustment for the Period” means the Eligible Restatement in the Period, plus the Carried Forward Restatement Adjustment Balance, but shall not exceed 0.5% of Revenues of the Group in the Period¹¹. This number will be positive in instances where the net impact of Eligible Restatements plus Carried Forward Restatement Adjustment Balance was to increase Adjusted PBT, and negative where Adjusted PBT is reduced.

“Equity Gain or Loss” means the net gain or loss included in calculating the Financial Accounting Profit (or Loss) of a Covered Group under a Qualifying Financial Accounting Standard arising from:

- (a) the disposition of an Ownership Interest;¹²
- (b) changes in the fair value of an Ownership Interest under fair value accounting; and
- (c) profit or loss included under the equity method of accounting, except profit or loss derived from a Joint Venture in which the Covered Group has joint control.

“Policy Disallowed Expenses” means expenses included in calculating the Financial Accounting Profit (or Loss) of a Covered Group under a Qualifying

¹⁰ In some instances, Eligible Restatements may also impact other aspects of the Amount A Model Rules. Such impacts will be dealt with in relevant sections of the Model Rules.

¹¹ The current draft proposes 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. Input from stakeholders is welcomed on this subject.

¹² The treatment of gains and losses associated with disposal of equity interests is still under discussion in the TFDE. In particular, under the current draft rules gains and losses associated with disposal of asset interests are included in the Tax Base, whereas gains and losses associated with disposal of equity interests are not. Amendments to these rules may be required to remove this difference in treatment in some instances, for example by no longer excluding from the tax base gains and losses associated with disposal of equity interests where the equity interest disposed is a controlling interest. Input from stakeholders is welcomed on the scope of the adjustments for equity gains and losses, and in particular on whether gains and losses from controlling interests shall be excluded from the tax base of Amount A.

Financial Accounting Standard for illegal payments, including bribes and kickbacks; and fines or penalties, whether or not periodic.

“Restated Period” means a period that a Covered Group is required to prepare restated financial accounts for according to relevant Qualifying Financial Accounting Standards.

“Restatement(s)” means a restatement of Financial Accounting Profit (or Loss) of a Period(s) that preceded the current Period under a Qualifying Financial Accounting Standard.

“Tax Expense (or Tax Income)” means the income tax (expense or income) included in calculating the Financial Accounting Profit (or Loss) of a Covered Group under a Qualifying Financial Accounting Standard. Tax Expense (or Tax Income) includes current and deferred income tax expense (or income) as recognised in the Financial Accounting Profit (or Loss) of the Covered Group. The definition of Tax Expense (or Tax Income) does not include interest charges for late payment of tax.

Other definitions

“Business Continuity Conditions” mean the following conditions:¹³

- (a) throughout the twelve months immediately preceding the Eligible Business Combination or Eligible Division, the Transferred Entity or Group or the part of the Predecessor Group that is transferred to the Covered Group carried on the same or similar business(es) as it did immediately before the Eligible Business Combination or Eligible Division; and
- (b) throughout the twenty-four months immediately following the Eligible Business Combination or Eligible Division, the Covered Group carries on the same or similar business(es) referred to in (a).

“Commencement Date” is the date of entry into effect of the Multilateral Convention (MLC) implementing Amount A or [DATE], whichever comes last.

“Eligible Business Combination” means an arrangement or transaction that is reported as a business combination in the Consolidated Financial Statements of a Covered Group, where:

- (a) an Entity that was not a Group Entity of another Group immediately before the arrangement or transaction is transferred such that the Entity constitutes a Group Entity of the Covered Group (the Transferred Entity), or
- (b) all or substantially all the assets and liabilities of another Group is transferred such that each of the transferred Group Entities of that other Group (the Transferred Group) constitutes a Group Entity of the Covered

¹³ Commentaries will elaborate on the practical application of the Business Continuity Conditions (which apply to determine whether a Covered Group has any “Transferred Losses”); and the criteria to take into consideration in assessing whether one business is “the same or similar” to another. Input from stakeholders is welcomed on the operation of this test, in particular on the relevant criteria to be considered and the time periods for its prospective and retrospective application.

Group, and the non-transferred part of that other Group, if any, is not a Group separate from the Covered Group following the arrangement or transaction.¹⁴

“Eligible Division” means an arrangement or transaction where the UPE of a single Group transfers all or substantially all its assets and liabilities to two or more Entities that each become the UPE of a new Group, including the Covered Group, in exchange for the pro rata issue to its shareholders of stock or securities representing the capital of these new Groups, provided the first-mentioned Group (the Predecessor Group) ceases to exist as a result of the arrangement or transaction.¹⁵

“Eligible Prior Period” means:

(a) In the case of a Covered Group, irrespective of whether it was a Covered Group in the prior Period(s):¹⁶

(i) The earliest prior Period (if any) of a Covered Group in which, after making the adjustments set out in paragraph 2 of Article 5, there is an unapplied Financial Accounting Loss, and that either

A. [begins][or][ends] on or after the Commencement Date, but [begins][or][ends] no more than *[between five and fifteen]*¹⁷

¹⁴ The current draft definition of an Eligible Business Combination captures business combinations that involve either the transfer of a stand-alone Entity (i.e. an Entity that was not a member of another Group), or the transfer of all or substantially all of the assets and liabilities of a Group. The draft definition applies without regard to the specific legal form of an operation. In the case of the transfer of all or substantially all of the assets and liabilities of a Group, the draft definition provides that the Group must cease to exist separately from the Covered Group after the operation. For example, sub-paragraph (b) would cover the acquisition of 95% of an existing Group where the remaining 5% is liquidated; but it would not capture cases where, for example, one Group (Seller) sells part of its business to the Covered Group, where both the Seller and the Covered Group continue to exist as separate Groups following the operation. In the latter case, the losses (if any) that may have been incurred by the Seller prior to the transfer continue to be carried forward by the Seller following the transfer, i.e. the unrelieved losses continue to be carried forward at the level of the Group in which they were generated (the Seller). The categories of operations that should fall in the definition of an Eligible Business Combination are still under discussion, as well as whether a portion of losses should transfer on a transfer of a portion of the Group. Input from stakeholders is welcomed on these issues, as well as on whether other categories of business combinations should be included in this definition.

¹⁵ The current draft definition of an Eligible Division captures only those divisions where the Predecessor Group (defined under this Title 9) ceases to exist following the operation. This would not capture, for example, 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 – in which cases the losses (if any) continue to be carried forward in that first Group. The definition of an Eligible Division is still under discussion. Input from stakeholders is welcomed on this definition and on whether other types of divisions should be included.

¹⁶ This current draft definition of “Eligible Prior Period” contains separate definitions depending on whether reference is made to an Eligible Prior Period of a Covered Group (sub-paragraph (a)), or of a Transferred Entity or Group or Predecessor Group (sub-paragraph (b)). In the case of a Covered Group, the draft rules identify the earliest prior Period with unapplied losses (i.e. historic losses that could give rise to Net Losses) that is within the specified time limitations, and all subsequent Period(s), if any. As such, the loss carry-forward regime follows a first-in-first-out approach. Input from stakeholders is welcomed on the operation of the current definition.

¹⁷ The introduction of time limitations to loss carry-forward is still under discussion within the TFDE. Input from stakeholders is welcomed on this question.

calendar years prior to the beginning of the current Period (post-implementation losses); or

B. [begins][or][ends] before the Commencement Date, but [begins][or][ends] no more than (i) *[between two and eight]*¹⁸ calendar years prior to the Commencement Date, and (ii) *[between five and fifteen]* calendar years prior to the beginning of the current Period (pre-implementation losses); and

(ii) All Period(s) (if any) between the Eligible Prior Period determined under sub-paragraph (i) and the current Period.

(b) In the case of a Transferred Entity or Group or Predecessor Group, provided it was not a member, or part, of any other Group in the prior Period(s), and irrespective of whether it was a Covered Group in the prior Period(s):¹⁹

(i) The earliest Period (if any) of the Transferred Entity or Group or Predecessor Group, prior to the Eligible Business Combination or Eligible Division, that would be determined under sub-paragraph (a)(i) (substituting a reference to “the Transferred Entity or Group”²⁰ or “the Predecessor Group”, as applicable, for the references to “the Covered Group”); and

(ii) All Period(s) (if any) between the Eligible Prior Period determined under sub-paragraph (b)(i) and the Eligible Business Combination or Eligible Division.

“Joint Venture” means an arrangement where all the parties, or a group of the parties, have joint control and rights to the net assets of the arrangement and whose financial results are reported in the Consolidated Financial Statements of a Covered Group under the equity method under a Qualifying Financial Accounting Standard.

“Controlling Interest” means an Ownership Interest that is sufficient to give the interest owner a controlling interest in the issuer under Qualifying Financial Accounting Standards.

“Ownership Interest” means an equity interest that carries rights to the profits, capital or reserves of an Entity, determined as per the applicable Qualifying Financial Accounting Standard.

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, are still under discussion within the TFDE. Input from stakeholders is welcomed on this question.

¹⁹ In the case of a Transferred Entity or Group, or a Predecessor Group, the current draft provides that the Eligible Prior Period(s) are determined in a manner analogous to that which applies in the case of a Covered Group. In particular, the same time limitations apply. However, only the Periods prior to the Eligible Business Combination or Eligible Division during which the Transferred Entity or Group, or Predecessor Group, was not a member or a part of another Group can be taken into consideration. Input from stakeholders is welcomed on the operation of the current definition.

²⁰ As the definition of a Financial Accounting Profit (or Loss) refers to Consolidated Financial Statements, the commentaries will clarify that, in case of Transferred Entity, reference should be made to the amount that would correspond to a Financial Accounting Loss based on its audited financial accounts.

“Predecessor Group”, of a Covered Group, means the Group of which the UPE has transferred part of its assets and liabilities to the UPE of a Covered Group in the context of an Eligible Division.

“Transferred Entity or Group” means an Entity or Group brought under the control of the UPE of a Covered Group in the context of an Eligible Business Combination.

“Transferred Losses” means:

- (a) in the case of an Eligible Business Combination, the total amount of cumulative Financial Accounting Losses that exceeds the total amount of cumulative Financial Accounting Profits of the Transferred Entity or Group²¹ over the Eligible Prior Period(s), after making the adjustments set out in paragraph 2 of Article 5;²²
- (b) in the case of an Eligible Division, the amount equal to $A \times B / C$ where²³:
 - A is the total amount of cumulative Financial Accounting Losses that exceeds the total amount of cumulative Financial Accounting Profits of the Predecessor Group over the Eligible Prior Period(s), after making the adjustments set out in paragraph 2 of Article 5.
 - B is the net value of the assets transferred from the Predecessor Group to the Covered Group as a result of the Eligible Division.
 - C is the total net value of the assets of the Predecessor Group immediately before the Eligible Division;
- (c) for the purposes of paragraphs (a) and (b)(A), any amount that would have been a Transferred Loss of the Transferred Group or Predecessor Group under sub-paragraph (b) of paragraph 3 of Article 5, if such Transferred Group or Predecessor Group had itself been a Covered Group prior to the Eligible Business Combination or Eligible Division, is added to the amount determined under paragraph (a) or (b)(A).²⁴

²¹ As the definition of a Financial Accounting Profit (or Loss) refers to Consolidated Financial Statements, the commentaries will clarify that, in case of Transferred Entity, reference should be made to the amount that would correspond to a Financial Accounting Loss based on its audited financial accounts.

²² The current draft mirrors the general rule in sub-paragraph (a) of paragraph 3 of Article 5 for the purposes of calculating the amount of Transferred Losses arising from an Eligible Business Combination. Together with paragraph (c) of this definition, it is intended to ensure consistency in the application of the Amount A tax base rules for the purposes of computing Transferred Losses.

²³ The current draft sets out the method to calculate, and allocate, the amount of Transferred Losses arising from an Eligible Division. It provides, first, that losses are computed at the level of the Predecessor Group (following rules that mirror the general rule in sub-paragraph (a) of paragraph 3 of Article 5; see also sub-paragraph (c) of this definition); and, second, that this amount is allocated among the ‘successor’ Groups – including the Covered Group – on the basis of a proxy (net asset value). Commentaries will elaborate on the specific method to calculate net asset value for the purposes of items B and C. Input from stakeholders is welcomed on the operation of this definition, as well as on the method to determine the net asset value.

²⁴ The current draft addresses situations in which there have been successive business reorganisations that could have given rise to Transferred Losses (e.g. if a Predecessor Group previously acquired another Group in an operation that could have qualified as an Eligible Business Combination; if a Transferred Group is a new Group resulting from a prior division that could have qualified as an Eligible Division). It mirrors sub-paragraph (b) of paragraph 3 of Article 5

to ensure that the calculation of Transferred Losses takes such prior business reorganisations into account (subject to the same conditions and time limitations). This way, the Amount A tax base rules apply consistently to compute the amount of losses that can be recognised at the level of the Transferred Group or Predecessor Group, as compared to the Covered Group. Input from stakeholders is welcomed on the operation of this definition.

