

2/17/2022

To the Tax Treaties, Transfer Pricing and Financial Transactions Division OECD/CTPA  
(delivered by e-mail to [tfde@oecd.org](mailto:tfde@oecd.org))

## Comments on the OECD's Public Consultation Document Pillar One – Amount A: Draft Model Rules for Nexus and Revenue Sourcing

Technology Industries of Finland ("TIF") appreciates the possibility to comment the proposal.

TIF represents Finnish technology industries and has over 1,700 member companies, sizes varying from small SMEs and start-ups to world leading MNEs. The technology industry is comprised of five sub-sectors: electronics and the electrotechnical industry, mechanical engineering, metals industry, consulting engineering and information technology. Technology industry is the most important export industry in Finland, with operations constituting over 50 % of all Finnish exports and responsible for 70 % of all private investments in R&D carried out in Finland. Over 300,000 Finns work in technology companies, while a total of around 700,000 people work in the technology sector directly or indirectly (of a total population of 5,500,000).<sup>1</sup>

### General comments

- TIF supports the ongoing hard work of the OECD to find a global solution to address the tax challenges arising from the digitalization of the economy.
- A sustainable tax system must promote tax certainty, prevent and reduce tax disputes and minimize double taxation. **TIF highlights the need for additional simplification** to the Nexus and Sourcing rules minimize the administrative costs and burden for the taxpayers and tax administrations.
- TIF is **particularly concerned that the sourcing rules applied on a transaction-by-transaction basis** do not provide legal certainty. Especially we are concerned about sourcing rules for **B2B services and components business**.
- **Businesses must not be required to have to create systems to collect data that they do not currently capture.**
- It is not clear based on the model rules, how requested data should be obtained and verified, and how data quality should be ensured. Customers may not be required, or permitted, to provide this data under their commercial terms and existing privacy rules. As a result, many businesses may need to consider modifications to how they contract with unrelated counterparties. **Businesses should not be required to obtain additional information from customers or third parties, that they do not already hold in the ordinary course of business.**
- TIF would welcome an opportunity to provide additional comments once the Model Rules are published in their entirety and to contribute to the development of the Commentary.

### Detailed comments

#### 1 Revenue sourcing rules

- Revenue sourcing rules are the bedrock of the Amount A: they are used for the purposes of scope, nexus and allocation formula. Thus, it is essential that the rules are sustainable,

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<sup>1</sup> For further information of TIF's member companies, please see <https://teknologiateollisuus.fi/en>

clear, predictable, give tax certainty and do not cause excessive compliance costs. The proposed sourcing rules are very complex and burdensome, likely to cause tax disputes and double taxation. For example, the chosen rule that the revenues must be sourced on a transaction-by-transaction basis is extremely burdensome.

- TIF believes that the revenue sourcing rules should be consistent with the information MNEs already collect and not to require the collection of additional data solely for the purpose of compliance with Pillar 1. In addition, the requirement to use or retain personal data needs to be consistent with privacy rules e.g. the GDPR in the EU.
- Companies should not be required to rely on information collected by, and passed to them by, another taxpayer to determine sourcing. Even if such an obligation to collect and transmit such data does not violate privacy (e.g. EU GDPR) requirements, it is not likely that current agreements with 3rd parties allow MNEs to request such information.
  - The obligation to gather this data would be virtually impossible for companies to fulfil, to the extent that the relationship between an MNE and an intermediary is such that the MNE does not normally collect or track information from such intermediaries that would enable it to determine the jurisdictions into which products are ultimately sold, and the extent to which they are ultimately sold to consumers.
  - In addition, its likely legislation changes would be required in some countries so that collecting and handing over the data to the MNE is acceptable.
- Basic rule in the sourcing rule hierarchy should be that the company can use the data it collects for business purposes. TIF is of the opinion that businesses should be able to choose which reliable indicator they use. Also, the Global Allocation Key or the Allocation Key for the particular type of revenue, should both be permitted sourcing methodologies, without having to consider other methods.
- TIF proposes that location determination made for the purposes of VAT or sales tax should also be acceptable for the purposes of Amount A.
- The scope of Amount A and possible scope limitations are not published yet. Therefore, it is difficult to comment whether the sourcing rules include guidance for all in-scope revenues. The same challenge applies for future new business models.
  - Concerning the provision of services 5(G) and 5(H) provide a common rule for revenues for provision of B2C and B2B services where other paragraphs do not apply. This raises the question: if it is possible to have common rules for "all the rest", would it be possible to simplify the model rules by using wider revenue groups?
  - The Model Rules were drafted to update the global taxation to address the challenges arising from the digitalization of the economy. This specified revenue sourcing list is not sustainable and will have to be updated from time to time. How will the rules be updated when the business models develop? Or will the new businesses use e.g. the excess brackets in 5(G) and 5(H)? This general definition will be weighty in the future when the business models evolve.
- It is impossible for the component manufacturers to source revenues based on the Final Customer of the final Finished Good. This places an undue burden and risk for tax disputes and tax increases for businesses.
  - Components, for example semiconductors, are incorporated to other components and products and transformed by unrelated parties into altogether different products. 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.
  - The taxpayer (Component manufacturer company) does not know, or have a possibility to get the information on the location of the third-party's Finished Good to the Final Customer.
  - The proposed sourcing rules for component parts need to be revised. The tracking responsibility should end at the first stage, i.e. when the components are sold from the Component manufacturer to the first direct customer (likely B2B).
- Part 3(B)4 describes that the Covered Group must take reasonable steps to reduce the size of the Tail-End Revenues. The reasonable steps need to be taken within two Periods. The footnote 16 explains that penalties can be applied if the Group fails to do so. Considering how wide and complex the Amount A legislation is, the time-limit must be at least 5 years and no penalties can be applied during that time.

## 2 Topics that should be addressed in the Commentary

- TIF welcomes the development of a detailed Commentary.
- It is very important that the Nexus rules and the Commentary includes a clear limitation that new nexus is for Amount A use only. New nexus rules must not be used for other tax purposes (such as VAT or WHT), customs duties, obligations or for any other non-tax or regulatory purposes. Clear rules would help this limitation to be appreciated in the domestic law and treaty changes. In this regard, we welcome the clarification on page 5 (General Articles, Title 4: Nexus and Sourcing rules). We, however, recommend that VAT and sales taxes, WHT, customs duties and transfer pricing are explicitly added as examples to the Commentary.
- The proposed sourcing rules do not clarify how the required information should be collected. Analysis and practical information should be included in the Commentary, also concerning data privacy.
- Data privacy is a crucial element of revenue sourcing rules and should be discussed in detail in the Commentary and clear rules on how the consumer data is collected and used, without jeopardizing the principle of data security. TIF appreciates the specification that a systemic-level review on the approach taken to revenue sourcing would be adequate and no requirement to retain and supply detailed and sensitive consumer and user personal data to the tax administrations (Part 2 – Reliable method, footnote 13). However, the data privacy matter needs to be considered also in the relationship between the Group companies and the Group and third parties.
  - If personal data needs to be processed to allocate taxes, it should be carefully considered what would be the minimum dataset subject to processing and how to minimise risks incurred by the processing. All the data processed needs to be strictly necessary to facilitate taxation.
  - Usually giving access to data is limited to certain use. Data privacy rules and nondisclosure rules limit the use of data. Thus, the 3<sup>rd</sup> party contracts would have to be renegotiated to allow using data for taxation purposes. It seems unreasonable to demand an MNE to renegotiate its 3<sup>rd</sup> party contracts when other indicators can be used.

- The MNE liable to collect the user data and in a taxpaying position might not be in such a “negotiating position” that it can force the 3<sup>rd</sup> party contractors to collect and deliver the required data in given time and without extra costs.
  - Even a small company might be obliged to collect and report the user data to an in-scope MNE. A tiny SME does not have personnel nor tools to do this. Thus, the revenue sourcing rules might result in extensive costs to 3<sup>rd</sup> parties and notable risk of data privacy sanctions.
  - Taxation is likely an acceptable reason for the UPE (or other MNE group company in a tax paying position) to collect personal geolocation or other relevant personal data. However, what is the legal situation concerning 3<sup>rd</sup> party companies or group companies not in a tax paying position? Would Amount A sourcing rules require changes to GDPR regulation and changes to all companies bound to GDPR rules?
  - Even the smallest 3<sup>rd</sup> party companies would have to be competent to evaluate whether the customer data request is such that it can be fulfilled without breaching the GDPR legislation. Data can only be requested to specified use and only to the limit absolutely necessary to that specified use.
  - Due to GDPR regulation, user data cannot be collected for tax purposes before the tax liability is triggered, i.e. once the legislation is in force and the company is in scope. The MNE might be liable to collect data in jurisdictions not applying data privacy rules and banned to collect the same data in the EU.
  - Data privacy and business secret issues are at risk when collecting and delivering data from 3<sup>rd</sup> party companies and through multiple distributors or group companies.
- Detailed and practical guidance on the “reasonable steps” must be included in the Commentary.

### 3 Technical comments

- On page 5, under the description of the Nexus Test, it is mentioned that “Revenues” is a defined term and that “Total Revenues” means the 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. This seems to be referring to the Pillar 2 calculation rules. If so, it would be helpful to clarify in the Pillar 1 rules that the revenue calculating rules for Pillar 2 purposes can be used here as well. If the “Revenues” or “Total Revenues” is something else, it should be carefully evaluated why a different concept is used and the terms needs to be clarified.
- List of definitions (Part 10) must be comprehensive. Now the General Definitions do not include all definitions mentioned in the text, such as: Tail-end Revenues, Reginal Allocation Key, Low Income Jurisdiction Allocation Key. In addition, or alternatively, the definition list should include the term and a reference, where the definition can be found, e.g. Reliable Indicator 2(3), page 10.

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