

Two-Pillar Solution to Address the Tax Challenges  
Arising from the Digitalisation of the Economy



# The Multilateral Convention to Implement Amount A of Pillar One

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**OVERVIEW**

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# 1. The Multilateral Convention in a nutshell

The **Multilateral Convention to implement Amount A of Pillar One (MLC)** is designed to enhance stability and certainty in the international tax system by:

- Co-ordinating a reallocation of taxing rights (Amount A) for market jurisdictions over a portion of the excess profit (i.e. profit in excess of 10% of revenue) of the largest and most profitable multinational enterprises (MNEs) operating in their market, with a corresponding obligation to relieve double taxation;
- Providing tax certainty to in-scope MNEs, with respect to both Amount A disputes and certain other tax disputes on existing rules; and
- Preventing the imposition of digital services taxes (DSTs) and other similar measures on all companies (whether or not they are within scope for Amount A).

For the MLC to enter into force, it needs to be ratified by at least 30 jurisdictions including the headquarters jurisdictions of at least 60% of MNEs currently expected to be within Amount A's scope.

An **Explanatory Statement (ES)** accompanies the MLC and provides clarification on how each provision is intended to apply. It reflects the agreed understanding of the negotiators with respect to the MLC and is intended to form part of the context of the MLC as that term is used in customary international law for interpretation purposes. The MLC is also accompanied by an **Understanding on the Application of Certainty (UAC)** which contains further details on how aspects of the Amount A tax certainty framework will operate in practice.

Updated estimates of the economic and revenue impacts of Amount A are available at <https://oe.cd/5eN>.

## Content of the MLC

### Amount A

Amount A applies only to MNEs with global revenue over EUR 20 billion and total profits greater than 10% of their global revenue. The revenue threshold will fall to EUR 10 billion, contingent on successful implementation determined via a 7-year review (see below). Certain exclusions apply (extractives, regulated financial services, defence and certain domestically oriented businesses).

It reallocates 25% of the MNE's excess profit (i.e. group profit in excess of 10% of its revenue) to jurisdictions where the MNE's revenues are sourced (market jurisdictions). This allocation:

- is adjusted or eliminated to the extent that the market jurisdiction already taxes the excess profit of the MNE outside the MLC; and
- comes with a corresponding obligation on a jurisdiction to grant relief for double taxation.

### Tax certainty

MNEs have access to a binding multilateral certainty process over whether they are within the MLC's scope and on their application of the MLC's provisions. There is also a tax certainty process (incl. mandatory and binding dispute resolution) for certain disputes on existing tax rules, to the extent that they relate to Amount A.

### DSTs and relevant similar measures

Parties to the MLC commit not to impose digital services taxes (DSTs) and relevant similar measures on any company (whether or not within the scope of Amount A). A list of existing measures which must be removed is in Annex A of the MLC. After the MLC comes into force, jurisdictions will be able to gain certainty in advance as to whether a proposed measure would breach this commitment.

## Operation of the MLC

### Entry into force

Requires ratification by 30 States accounting for at least 60% of the ultimate parent entities of MNEs initially expected to be in-scope for Amount A. Once these minimum conditions are met, the States that have ratified can decide when the MLC will enter into force.

### The Conference of the Parties

The MLC establishes a 'Conference of the Parties' to make decisions or exercise functions required under the MLC, including with respect to interpretation and implementation.

### Interaction with existing tax treaties

Existing bilateral tax treaties between Parties to the MLC will continue to apply, but will be superseded by the MLC to the extent needed to permit the application of Amount A. Tax treaties with Jurisdictions which are not Parties to the MLC will not be affected.

### 7-year review

The Conference of the Parties will carry out a review of the implementation of the MLC (based on pre-determined criteria) seven years after entry into force. The scope revenues threshold will be reduced from EUR 20 billion to EUR 10 billion, unless the implementation of Amount A is not deemed to be successful by the Parties. In that case, the Parties will be required to address any identified implementation issues within two years to enable the lowering of the scope revenues threshold.

## Layout of the Multilateral Convention

The MLC consists of 7 parts, 53 Articles, and 9 Annexes, as set out below. To clarify the approach taken in each provision of the MLC, an Explanatory Statement and an Understanding on the Application of Certainty provide further details.

### **PART I – General**

Article 1 – *Application and Personal Scope*

### **PART II – Definitions**

*Annex B, Annex C*

Article 2 – *General Definitions*

Article 3 – *Covered Group*

### **PART III – Allocation and Taxation of Profits**

*Annex D*

Article 4 – *Taxation of Profits of a Covered Group*

Article 5 – *Allocation of Profit Associated with Revenues in the Market*

Article 6 – *Sources of Adjusted Revenues*

Article 7 – *Sourcing Principles for Categories of Adjusted Revenues*

Article 8 – *Nexus*

### **PART IV – Elimination of Double Taxation**

Article 9 – *Relief for Amount A Taxation*

Article 10 – *Identification of the Specified Jurisdiction for a Covered Group*

Article 11 – *Allocation of the Obligation to Eliminate Double Taxation with Respect to the Amount A Relief Amount*

Article 12 – *Provision of Relief for Amount A Taxation to Relief Entities*

Article 13 – *Identification of Relief Entities Entitled to Elimination of Double Taxation*

### **PART V – Administration and Certainty**

*Annex E, Annex F, Annex G*

Section 1 – *Administration (Article 14 - 21)*

Section 2 – *Tax Certainty Framework for Parts II to IV (Amount A) (Articles 22 - 32)*

Section 3 – *Tax Certainty for Issues Related to Amount A (Articles 33 - 36)*

Section 4 – *Exchange of Information and International Cooperation (Article 37)*

### **PART VI – Treatment of Specific Measures Enacted by Parties**

*Annex A, Annex H*

Article 38 – *Removal and Standstill of Digital Services Taxes and Relevant Similar Measures*

Article 39 – *Elimination of Amount A Allocations for Parties Imposing Digital Services Taxes and Relevant Similar Measures*

Article 40 – *Treatment of Specific Measures in Scope of Tax Treaties*

### **PART VII – Final Provision**

*Annex I*

Article 41 – *Signature and Ratification, Acceptance or Approval*

Article 42 – *Territorial Application*

Article 43 – *Review Process to Lower the Adjusted Revenues Threshold*

Article 44 – *Amendment*

Article 45 – *Reservations*

Article 46 – *Relationship between this Convention and Existing Tax Agreements*

Article 47 – *Conference of the Parties*

Article 48 – *Entry into Force*

Article 49 – *Entry into Effect*

Article 50 – *Withdrawal*

Article 51 – *Termination*

Article 52 – *Relation with Protocols*

Article 53 – *Depositary*

## 2. How Amount A works

### Overview

To comply with Amount A, MNEs will have to apply a set of rules that can be broken down into five basic steps (further details on each step are available below).

#### Step 1. Determine if you are in scope

1.1. Group revenue and profitability test



1.2. Exceptional segmentation rule



1.3. Limited exclusions



#### Step 2. Identify eligible market jurisdictions

2.1. Revenue sourcing rules



2.2. Nexus test based on sourced revenue



#### Step 3. Calculate and allocate a portion of your excess profit

3.1. Determine relevant group profit



3.2. Allocate a portion of excess profit to markets



3.3. Adjust for double counting



#### Step 4. Eliminate double taxation

4.1. Determine relevant jurisdictional profit



4.2. Allocate obligation to relieve double taxation



4.3. Identify relief entities within a jurisdiction



#### Step 5. File, pay and access to tax certainty

5.1. File with lead tax administration



5.2. Payment from single group entity



5.3. Claim relief for double taxation



5.4. Access to tax certainty

## Detailed steps

### Step 1. Determine if you are in scope

#### 1.1. Group revenue and profitability test

Objective and quantitative thresholds apply to ensure only very large and highly profitable MNEs are in scope (i.e. revenue above EUR 20 billion and profitability greater than 10%).



#### 1.2. Exceptional segmentation rule

Exceptionally, where an MNE does not meet those thresholds but one of its reported segments in the consolidated financial statements does on a standalone basis, the segment would be in scope.



#### 1.3. Limited exclusions

Scope exclusions apply to specific industries (extractives, regulated financial services, and defence), and purely domestic-oriented businesses.



### Step 2. Identify eligible market jurisdictions

#### 2.1. Revenue sourcing rules

Allocate MNE revenues to market jurisdictions through specific sourcing rules identifying the jurisdiction where the end customer consumes or uses the good or service.



#### 2.2. Nexus test based on revenue

Determine whether a market jurisdiction is entitled to tax Amount A profit through a quantitative threshold (i.e. sourced revenue above EUR 1 million, reduced to EUR 250 thousand for jurisdictions with GDP below EUR 40 billion), regardless of the physical presence of the MNE.



### Step 3. Calculate and allocate a portion of your excess profit

#### 3.1. Determine relevant group profit

The starting point is the profit reported in the consolidated financial accounts of the MNE, after applying a limited number of book-to-tax adjustments and taking into consideration any prior losses incurred by the MNE.



#### 3.2. Allocate a portion of excess profit to markets

Apply a formula to identify 25% of the MNE's profit in excess of 10% of the MNE's revenue, and allocate this defined portion of excess profit to market jurisdictions using a revenue-based allocation key.



#### 3.3. Adjust for double counting (MDSH)

Finally, allocated profit is adjusted downwards to prevent 'double counting' in instances where a market jurisdiction could otherwise tax the excess profit of the MNE twice – i.e. the Marketing and Distribution Safe Harbour Adjustment (MDSH).



## Detailed steps (cont'd)

### Step 4. Eliminate double taxation

4.1. Determine relevant jurisdictional profit (and RODP)



4.2. Allocate obligation to relieve double taxation to jurisdictions



4.3. Identify relief entities within a jurisdiction

The MNE first calculates its profit in each jurisdiction by summing the accounting profit (or loss) of each entity in the jurisdiction and making several book-to-tax adjustments. It then calculates its depreciation and payroll (D&P) in each jurisdiction on a similar basis, and expresses the jurisdictional profit as a return on depreciation and payroll (RODP).

A tiered approach based on the RODP of each jurisdiction is used to allocate the obligation to relieve double taxation at the jurisdictional level, with those obligations being allocated first to the jurisdictions with the highest RODP (i.e., typically those with high levels of intangible asset ownership).

Specific rules apply to identify within each relieving jurisdiction the entities of the MNE that will be entitled to claim relief from double taxation.



### Step 5. File, pay and access to tax certainty

5.1. File with lead tax administration



5.2. Payment from a single group entity



5.3. Claim relief for double taxation



5.4. Access to tax certainty

A single tax return covering all the MNE's Amount A tax liabilities across the world, together with a standardised common documentation package, is filed with the lead tax administration (typically the parent jurisdiction), which distributes it to all affected jurisdictions.

A Designated Payment Entity (DPE) of the MNE makes all payments for all Amount A tax liabilities, and relief entities within the MNE are required to make compensating payments to fund the DPE (with those payments ignored for tax purposes).

Relief entities are entitled to double tax relief under the domestic laws of the applicable relieving jurisdiction within 90 days of a claim or through an immediate reduction in instalment payments.

MNEs have access to a mechanism providing binding multilateral certainty over all aspects of Amount A rules in all relevant jurisdictions, as well as to a Mandatory Binding Dispute Resolution Process for tax disputes on existing rules that are related to Amount A (e.g. transfer pricing, permanent establishment rules, characterisation issues on withholding taxes).

## 3. Selected issues

### (a) What happens with DSTs and relevant similar measures?

Amount A comes with the removal and standstill of DSTs and relevant similar measures. These commitments in the MLC apply with respect to all companies, and are not limited to those that are in-scope of Amount A. Any breach of these commitments leads to the denial of Amount A. Existing measures will be removed when Amount A comes into effect. Future measures will be addressed by a robust review mechanism, guaranteeing a timely decision of the Conference of the Parties.

#### What happens with existing DSTs?

The MLC (Annex A) includes a list of existing measures that the Parties commit to withdraw when Amount A starts applying.

#### What happens with future DSTs or similar measures?

##### How will future measures be qualified as a DST or Relevant Similar Measure?

Three cumulative criteria to define the measures:

1. the tax is applied by reference to market-based criteria (e.g. location of customers and users);
2. it is ring-fenced to non-resident or foreign-owned businesses;
3. it is outside the scope of tax treaties.

##### Who determines whether it's a DST or Relevant Similar Measure?

Determination of the measures is made by the Conference of the Parties. The MLC guarantees a decision is taken within 12 months.

##### What happens in case the Conference of Parties decides that a measure is a DST or a Relevant Similar Measure?

When the Conference of Parties determines that a measure is a DST or a Relevant Similar Measure, the party is denied Amount A allocation until the measure is withdrawn.

#### What about non-traditional nexus (e.g. Significant Economic Presence)?

Significant Economic Presence concepts and similar types of nexus rules that are in scope of tax treaties are not treated as DSTs under the MLC (third criteria of DST above). However, because their effect and objectives overlap with Amount A, Parties to the MLC will not apply them to in-scope MNEs once the MLC comes into effect.





## (b) How does the Tax Certainty Framework for Amount A work?

The Amount A Tax Certainty Framework contains three mechanisms to provide certainty over all aspects of Amount A. In each case, outstanding disagreements will be referred to a determination panel for a final resolution. This ensures that any MNE that submits a request for certainty obtains a binding certainty outcome unless it is considered to have withdrawn that request, or it is persistently late in providing information without explanation or acts in an uncooperative or non-transparent manner.

### Advance certainty

An advance certainty review provides an MNE with binding multilateral certainty that its methodology for applying specific provisions of the MLC will be accepted for a specified number of years, subject to agreed critical assumptions continuing to apply. This certainty will also cover relevant elements of the MNE's internal control framework.

### Scope certainty

A scope certainty review provides an out-of-scope MNE with binding multilateral certainty from Parties named in the request, that it is not in scope of Amount A. This removes the risk of unilateral compliance action in jurisdictions where the MNE sources revenues. A follow-up scope certainty review based on simplified documentation is available to extractives and regulated financial services groups that have already been reviewed.

### Comprehensive certainty

A comprehensive certainty review provides an MNE with binding multilateral certainty over its application of rules on Amount A in all Parties to the MLC. This ensures a consistent treatment of the MNE across jurisdictions and the full elimination of double taxation.



## (c) What is the Tax Certainty Process for “issues related to Amount A”?

Since Amount A will co-exist with the existing international tax rules, the Multilateral Convention (MLC) goes beyond the tax certainty framework for Amount A and provides in-scope MNEs with an enhanced tax certainty process for a broad range of disputes on existing tax treaty rules (especially transfer pricing and business profit attribution disputes that potentially affect Amount A calculations – termed “Related Issues”). This is delivered through a mandatory binding dispute resolution (MBDR) process for any “Related Issues” that are unresolved in a Mutual Agreement Procedure (MAP), ensuring that all those issues are resolved in an efficient, effective, and timely manner. This framework creates clear incentives for dispute prevention approaches while also guaranteeing that double taxation is eventually avoided, where dispute resolution becomes necessary.

### What is a “Related Issue”?

A ‘Related Issue’ is a **transfer pricing, business profit or withholding tax characterisation dispute covered by a tax treaty** where:

#### The adjustment involved impacts Amount A relief

*The adjustment changes the jurisdictions providing relief or the position of a relieving jurisdiction within the tier system<sup>1</sup> (step 4.2. of page 7)*

OR

#### The adjustment involved is material

*The sum of all adjustments made by a jurisdiction to MNE Entities for a year is at least EUR 1.5 million (after a EUR 3 million threshold for an initial three-year period).*

<sup>1</sup> This is measured by adding the adjustment to the MNE’s jurisdictional profit in that jurisdiction and verifying whether this causes a change.

### What tax certainty mechanisms are provided?

The improved process provides in-scope MNEs **two important benefits**:

#### (1) Access to the Mutual Agreement Procedure (MAP) + implementation of a solution

The MNE can file MAP requests based on the MLC concerning Related Issues to both jurisdictions involved and resulting MAP agreements would always be implemented.

#### (2) A mandatory binding dispute resolution (MBDR)<sup>2</sup> process for disputes unresolved in MAP > 2 years

An enhanced process allowing panels to resolve disputes not otherwise subject to mandatory binding resolution.

Each panel would comprise the two competent authorities involved, two independent experts (selected by each competent authority) and an independent expert Chair.

<sup>2</sup> Certain developing countries with limited MAP experience may elect not to go to binding resolution (see issue (e)).

### What are the expected benefits for in-scope MNEs?

#### Enhanced tax certainty for disputes on existing rules

The tax certainty mechanisms in the MLC encourage efficient, effective and timely resolution of transfer pricing MAP cases (including existing and recurring/long-pending disputes)

#### Greater focus on dispute prevention efforts from tax administrations

The framework creates incentives for both tax administrations and taxpayers to use more dispute prevention tools to avoid resource outlay involved in going to the dispute resolution panel and the complexity of subsequently reflecting results multilaterally for Amount A. Tax administrations are thus more likely to engage in early certainty approaches, including risk assessment and bilateral/multilateral APAs)

## (d) Do withholding taxes have any implications for Amount A?

To ensure a balanced reallocation system, and parity between all existing taxing rights on MNE's excess profit, the Amount A co-ordinated reallocation system takes into consideration withholding taxes (WHTs) that are similar to other corporate taxes on business profits. The implications of this are twofold: certain WHTs can potentially reduce the Amount A allocated to a market jurisdiction; they can also reduce the obligation of a jurisdiction to relieve double taxation.

### 1. Which WHTs have implications for the Amount A system?

- Only WHTs levied on cross-border deductible payments made to in-scope MNEs, whether paid by a member of the MNE or a third party, are relevant – as these reflect a primary level of taxation considered similar to other corporate income taxes, that have an impact on the allocation of existing taxing rights.
- WHTs on dividends, capital gains, and payments made to out-of-scope MNEs (e.g. extractives) are not relevant.

### 2. Possible consequences for Amount A allocations

- When a market jurisdiction collects the type of WHT described in 1., specific rules apply to prevent 'double counting'.
- Under the marketing and distribution safe harbour (MDSH) adjustment ([step 3.3 of page 6](#)), such WHT is first converted into a profit amount through a formula, and then added to the jurisdictional profit of the market jurisdiction that is the basis for the MDSH calculations (i.e. upward adjustment).
- As part of those calculations, specific rules apply to exclude the normal profit associated with the converted WHT (for example, where the MNE has no physical presence in the market, 60% of the converted amount is deemed normal profit excluded from the MDSH calculations).

### 3. Possible consequences for elimination of double taxation

- When a payment is subject to the type of WHT described in 1., the residence jurisdiction of the recipient/payee (member of an in-scope MNE) typically waives its taxing right over that income by providing double tax relief.
- To ensure that the residence jurisdiction is not required to provide relief twice for the same income of the MNE (one time under existing rules, and another time under Amount A rules), the WHT collected abroad is converted into a profit amount (through a formula) and then deducted from the jurisdictional profit that is the basis for allocating the obligation to relieve double taxation (i.e. downward adjustment) ([step 4.1. of page 7](#)).
- This downward adjustment to jurisdictional profit also feeds into the MDSH calculations ([step 3.3. of page 6](#)).



## (e) What can Developing Countries expect from Amount A?

The Inclusive Framework consists of more than 140 countries and jurisdictions, with a wide diversity in membership including around 70 developing countries, participating on an equal footing. Their influence on the negotiation is reflected both in the general design of Amount A (see General design), as well as in specific rules that cater for their specific circumstances (see Specific rules). Overall, developing countries will gain revenue, while their administrative costs are expected to be limited (see Administration).

### General design

- The scope of Amount A excludes extractives activities, thus shielding developing countries with natural resources from any reallocation of the related taxing rights.
- The overall design of Amount A, which reallocates taxing rights based on excess profits, benefits developing countries, where low levels of excess profits are generally booked.
- Overall, developing countries are expected to experience the greatest gains as a share of current corporate tax revenues (updated estimates of the economic and revenue impacts of Amount A are available at <https://oe.cd/5eN>).

### Specific rules

To cater for their particular circumstances, specific treatments are provided to developing countries at numerous steps of the operation of Amount A.

Revenue sourcing and nexus	<ul style="list-style-type: none"> <li>• Where MNEs are unable to determine which market a portion of their revenue should be allocated to (so-called “tail-end” revenue), it is allocated to developing countries by default (<a href="#">step 2.1. of page 6</a>).</li> <li>• The threshold of sales needed to entitle a jurisdiction to tax Amount A is low (EUR 1 million) and even lower (EUR 250k) for market economies with GDP below EUR 40 billion (<a href="#">step 2.2 of page 6</a>).</li> </ul>
Profit allocation (MDSH)	<ul style="list-style-type: none"> <li>• <i>De minimis</i> threshold based on MNE’s profit in a jurisdiction (i.e. EUR 50 million) under the marketing and distribution profits safe harbour (MDSH) should protect most developing countries from any reduction of their Amount A allocations (<a href="#">step 3.3 of page 6</a>).</li> <li>• Additional rules for low-income and lower-middle income economies further reduce or eliminate any MDSH impact on those countries (for example with respect to withholding taxes).</li> </ul>
Elimination of double taxation	<ul style="list-style-type: none"> <li>• <i>De minimis</i> threshold, which includes an absolute amount based on MNE’s profit in a jurisdiction (i.e. EUR 50 million), together with the RODP metric used to allocate the obligation to relieve double taxation (<a href="#">step 4.2. of page 7</a>), should ensure that developing countries generally do not bear the burden of Amount A (i.e. do not give up existing taxing rights).</li> </ul>
Tax certainty	<ul style="list-style-type: none"> <li>• Review panel composition rules ensure developing country representation (for Amount A issues)</li> <li>• Many developing countries are entitled to an elective (instead of mandatory) binding dispute resolution process for “Related Issues“ (<a href="#">step 5.4 of page 7</a>).</li> </ul>

### Administration

- Amount A relies on formulas and quantitative metrics that limit factual determinations, and the compliance burden that goes with it.
- The streamlined compliance process (e.g. filing, payment) means the lead tax administration (in the headquarters jurisdiction) bears most of the compliance burden associated with Amount A ([step 5.1 and 5.2 of page 7](#)).
- Developing countries have a full right to participate in the multilateral tax certainty process, but they can also rely on the multilateral review process (where other market jurisdictions are well represented) to enforce Amount A, and decide to allocate their tax administration resources elsewhere.

# The Multilateral Convention to Implement Amount A of Pillar One – Overview, October 2023



For more information:

 [ctp.contact@oecd.org](mailto:ctp.contact@oecd.org)

 [www.oecd.org/tax](http://www.oecd.org/tax)

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