

# Brown Bag Workshop

## Base Erosion and Profit Shifting (BEPS): Pillar 1

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# Agenda

## **BEPS Pillar 1 (45 mins)**

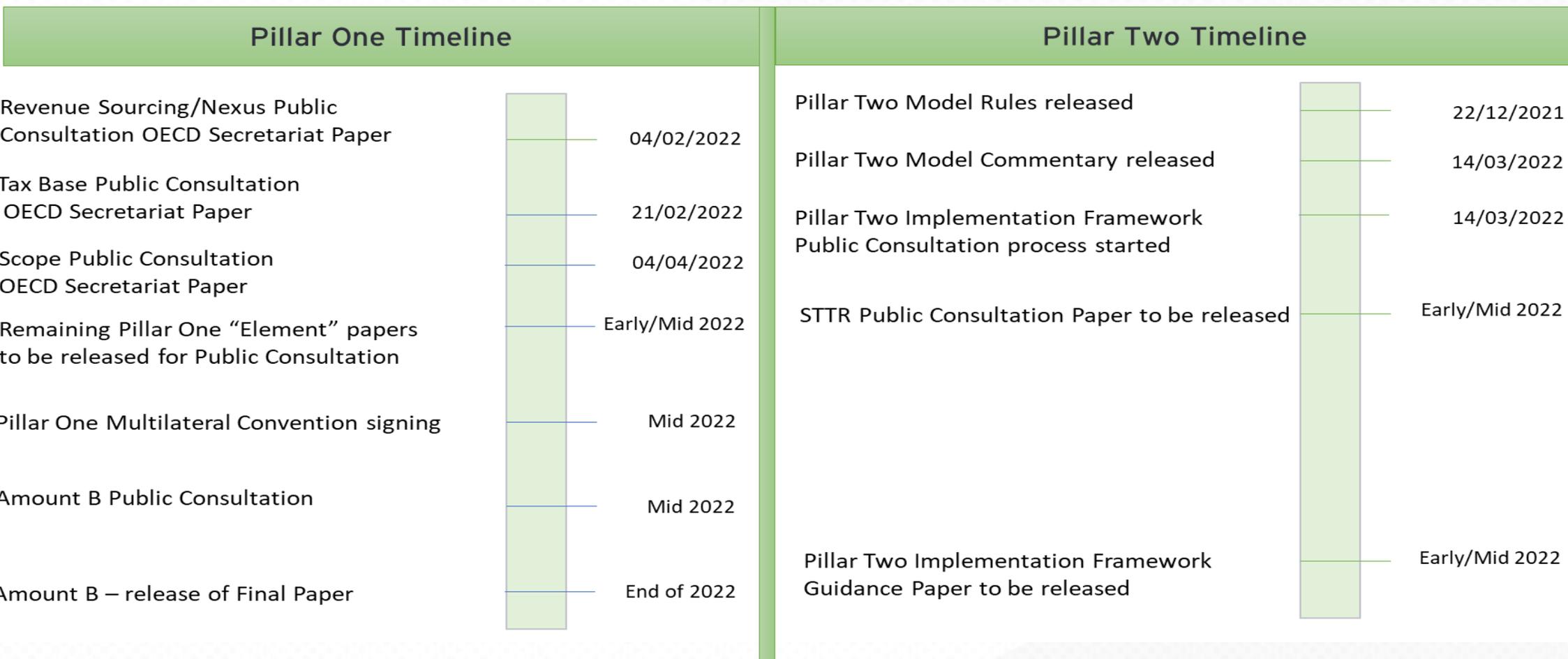
1. Status Update and Path Forward
2. Pillar 1 Architecture
3. Focusing on Amount A
4. Amount A Steps
5. Pillar 1 Next Steps

## **Question & Answer (15 mins)**

01

# Status Update and Path Forward

# BEPS 2.0 — the Two Pillar Timeline



[www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm](http://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm)

02

# Pillar 1 Architecture

# Pillar One Overview

## Amount A

*A share of residual profits allocated to countries with a revenue nexus*

- Formulaic
- Group level
- New nexus

## Amount B

*Fixed return for baseline distribution functions*

- ALP applies
- All MNEs subject to Amount B

## Tax Certainty

*Dispute prevention and resolution mechanisms*

Early certainty and mandatory dispute resolution

*OECD/G20 Base Erosion and Profit Shifting, Tax Challenges Arising From the Digitalisation – Report on the Pillar One Blueprint (OECD, Paris, October 2020)*

# OECD 8 October 2021 Statements: Key Points

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## Scope:

- In-scope MNEs - global turnover above €20 billion and profitability above 10% calculated using an averaging mechanism

## Nexus:

- Nexus test is met if the revenue of a Covered Group is:
  - - equal or greater than €1 million for jurisdictions with annual GDP equal to or greater than €40 billion
  - - equal to or greater than €250,000 for jurisdictions with annual GDP of less than €40 billion

## Quantum:

- The profits subject to reallocation under Pillar One is 25% of the excess above 10% net profit margin

## Tax certainty:

- *“an elective binding dispute mechanism for developing countries”*

## Unilateral measures: an important addition:

- Indicates unilateral measures may apply beyond just vanilla DSTs— it refers to *“and other relevant similar measures”*
- Newly enacted DSTs to be stood still and stood down from 8 October 2021

[www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm](https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm)

# Public Consultation documents



03

# Focusing on Amount A

# Amount A Overview

## Which groups are subject to Amount A?

Apply existing profit allocation rules

Apply group revenue and profit test

Apply carve-outs

## Quantum

Calculate Amount A (formula)

## Nexus and allocation

Apply revenue sourcing rules and nexus test

Allocate Amount A to eligible market jurisdictions

## Tax base

Determine if segmentation is required and compute APBT per segment

Potential adjustments to determine APBT

Accounting for losses

## Administration and Implementation

Identify paying entities and eliminate double taxation

Administration and Implementation

Prevent and resolve bilateral tax disputes

**The technical details of Amount A are yet to be finalised by the Inclusive Framework**

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# Amount A Steps

# Scope of Amount A

*Is the MNE group partly or wholly in scope of Amount A?*

## Elements of Scope – May change through the Public Consultation Process

### Apply existing profit allocation rules

#### Transfer Pricing:

Apply existing rules (e.g. transfer pricing) for allocation of profits of a group among subsidiaries and PEs.

### Apply group revenue and profit test to MNE consolidated financial accounts

#### Criteria:

MNEs are subject to Amount A if they have both:

1. Revenue over €20 billion, AND
2. Pre-Tax Profit Margin (PTPM) above 10%

### Apply-Exclusions

#### Exclusions for Financial Services and Extractives:

The Extractives exclusion includes two tests:

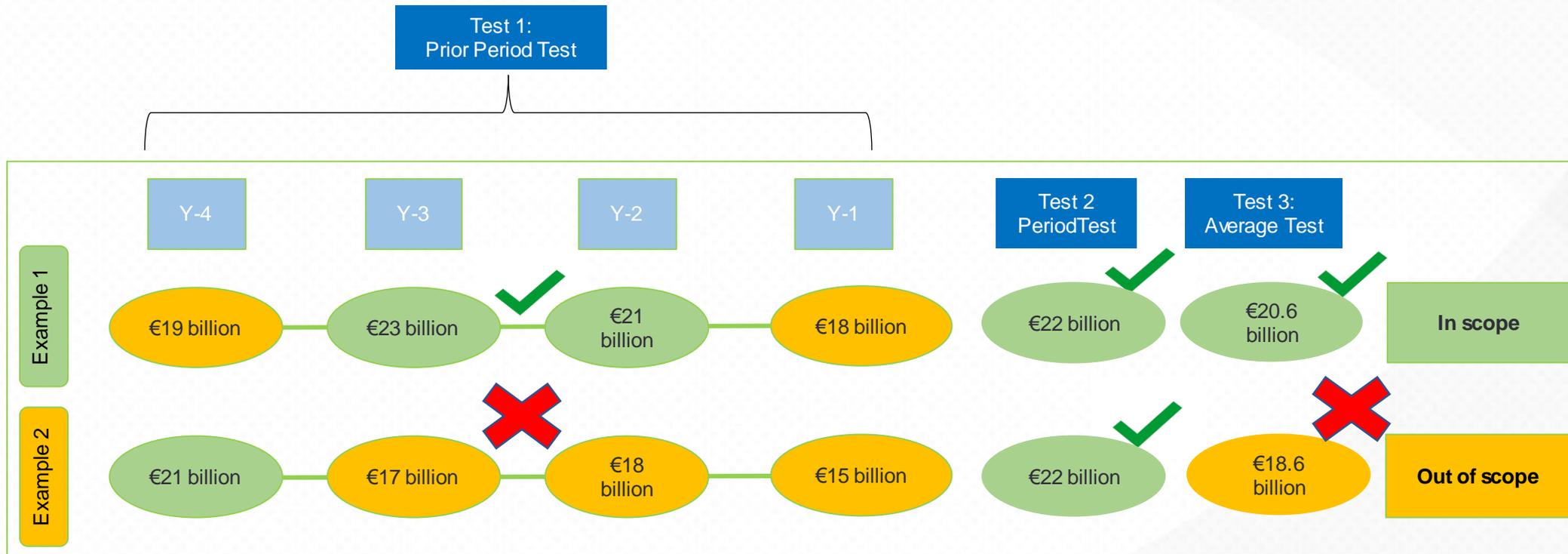
1. A *product test* (i.e., the sale of an Extractive Product)
2. An *activities test* (i.e., conduct Exploration, Development or Extraction)\*

The Regulated Financial Services exclusion contains three elements which must be satisfied: licensing; regulatory capital and activities requirements.\*\*

OECD, Public Consultation Document Pillar One – Amount A: Draft Model Rules for Domestic Legislation on Scope (OECD, Paris, 4 April 2022)

# Scope of Amount A – Profit Threshold (Example)

May change through the Public Consultation Process



OECD, Public Consultation Document Pillar One – Amount A: Draft Model Rules for Domestic Legislation on Scope (OECD, Paris, 4 April 2022)

# Calculating the tax base and accounting for losses

Is the MNE group partly or wholly in scope of Amount A?

## Elements of Tax Base - **May change through the Public Consultation Process**

### Segmentation required if all of following are met:

1. Segment revenue > €20 billion
2. Segment APBT > 10%
3. Segment is disclosed in the financial accounts

If disclosed financials are only segmented to gross profit level, the MNE may need to allocate indirect costs etc.

### Book to tax adjustments

An MNE Group must adjust for:

- Current and deferred income tax expense/ income
- Dividends
- Equity gain or loss
- Expenses for illegal payments (e.g. bribes), fines and penalties

### Restatements

Required under accounting rules (to maximum of 0.5% of group revenue)

### Accounting for losses - (3 step process)

1. Identify eligible prior periods (from earliest period that generated unrelieved losses to current period)
2. Calculate net losses in eligible prior periods
3. Carry forward and deduct net losses in the current period

**“Adjusted Profit Before Tax” – the basis for Amount A calculations**

OECD, Public Consultation Document Pillar One – Amount A: Draft Model Rules for Tax Base Determinations (OECD, Paris, 18 February 2022)

# Calculating the tax base and accounting for losses (Example)

May change through the Public Consultation Process

MNE Group consolidated financials	Pre-adjustment	Post-adjustment
Revenue	21,000	21,000
Other income;		
<del>- Dividends</del>	<del>100</del>	0
<del>- Gain from sale of equity interest</del>	<del>200</del>	0
<del>- Profit/loss from equity interest</del>	<del>1,700</del>	0
Total other income	2,000	0
Total income	23,000	21,000
Cost of Goods Sold	15,000	15,000
Gross Margin	8,000	6,000
SG&A	3,875	3,875
<del>Fines</del>	<del>600</del>	0
Interest charge	400	400
Loss carry forwards applied	125	125
Adjusted PBT	3,000	1,600

**MNEs may need to consider adjusting revenue from, including dividends, and gains from equity interests, etc.**

This adjusted PBT figure is used as the basis of the Amount A calculation

OECD, Public Consultation Document Pillar One – Amount A: Draft Model Rules for Tax Base Determinations (OECD, Paris, 18 February 2022)



# Calculating the tax base and accounting for losses (Example)

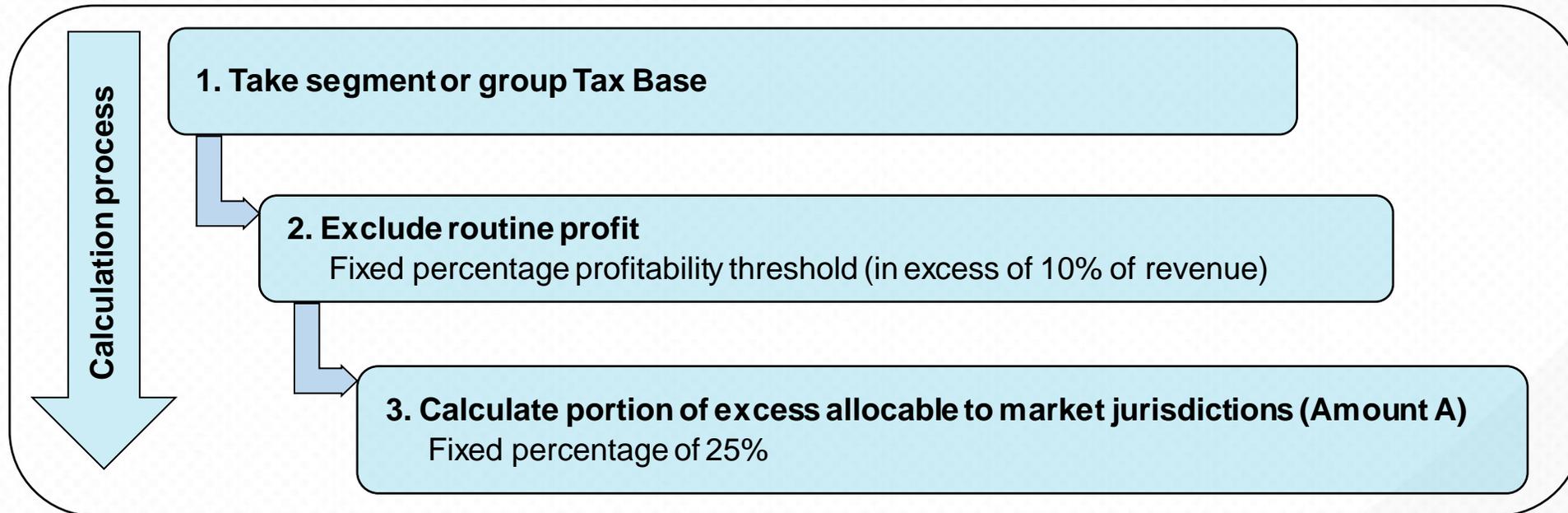
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OECD, Public Consultation Document Pillar One – Amount A: Draft Model Rules for Tax Base Determinations (OECD, Paris, 18 February 2022)

# Quantum for Amount A

*What share of taxable profit is allocable to market jurisdictions?*

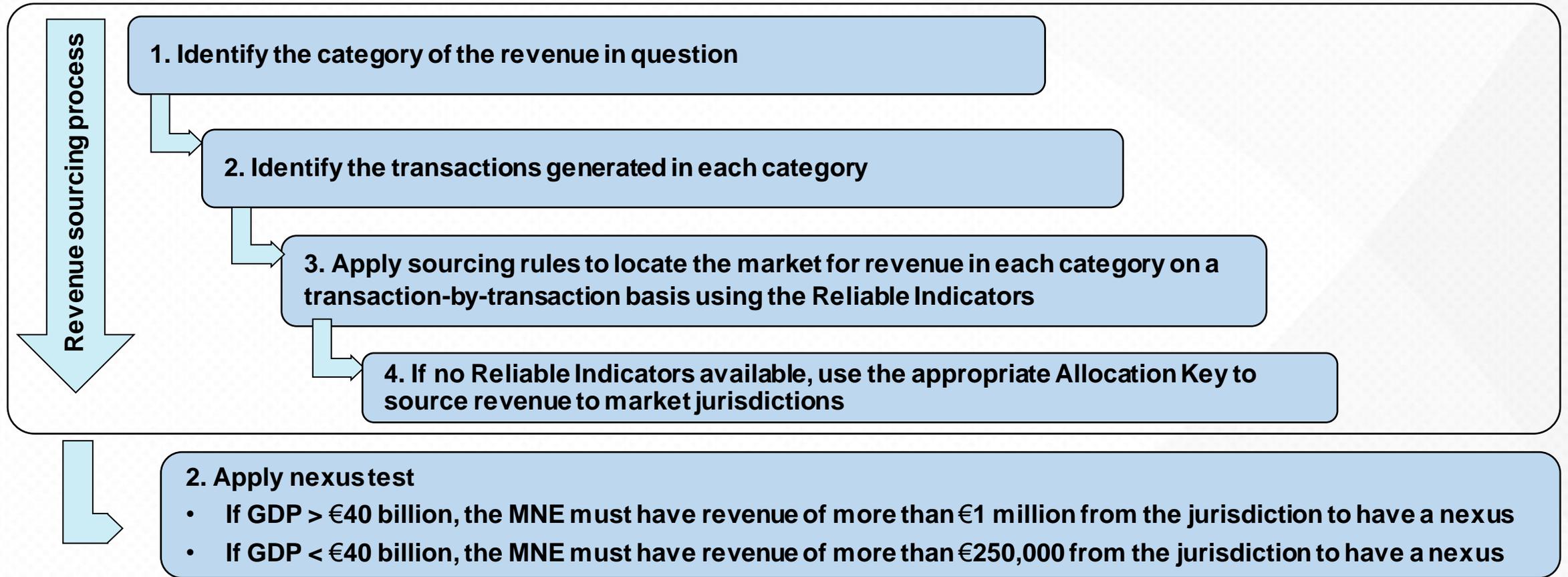


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# Apply revenue sourcing and nexus rules

Where does the MNE source revenue from, and does it constitute a nexus?

May change through the Public Consultation Process



OECD, Public Consultation Document Pillar One – Amount A: Draft Model Rules for Nexus and Revenue Sourcing (OECD, Paris, 4 February 2022)

# Identifying categories of revenue

*Major categories of revenue and reliable indicators*

**May change through the Public Consultation Process**

	Category	Principle of sourcing revenue
1	Finished goods	Place of delivery to final customer
2	Digital goods	Place of location of the customer, or place of use by a business
3	Components	Place of delivery to the final customer of the finished good
4	Services	Depends on the sub-category of service
5	Intangible property	Place of use of a service; place of delivery of a finished good or copyright; or location of user
6	Real property	Where real property is located
7	Government grants	Jurisdiction of granting government
8	Non-customer revenues	In proportion to other categories of revenue



**MNEs will need to prove the accuracy of the application of the revenue sourcing rules**

*OECD, Public Consultation Document Pillar One – Amount A: Draft Model Rules for Nexus and Revenue Sourcing (OECD, Paris, 4 February 2022)*

# Allocate Amount A

How much of Amount A is allocated to each eligible market jurisdictions?

**The OECD Public Consultation Paper on the Marketing & Distribution Profits Safe Harbor has not yet been released**

## 1. Calculate portion of Amount A allocable to market jurisdictions:

- Revenue is the allocation key
- If a country accounts for 10% of an MNE's revenue, it would be allocated 10% of total allocable Amount A

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## 2. Confirm if full amount allocated can actually be paid to market jurisdictions: **(Not yet decided)**

Where the residual profits of an in-scope MNE are already taxed in a market jurisdiction, a marketing and distribution profits safe harbour will cap the residual profits allocated to the market jurisdiction through Amount A.

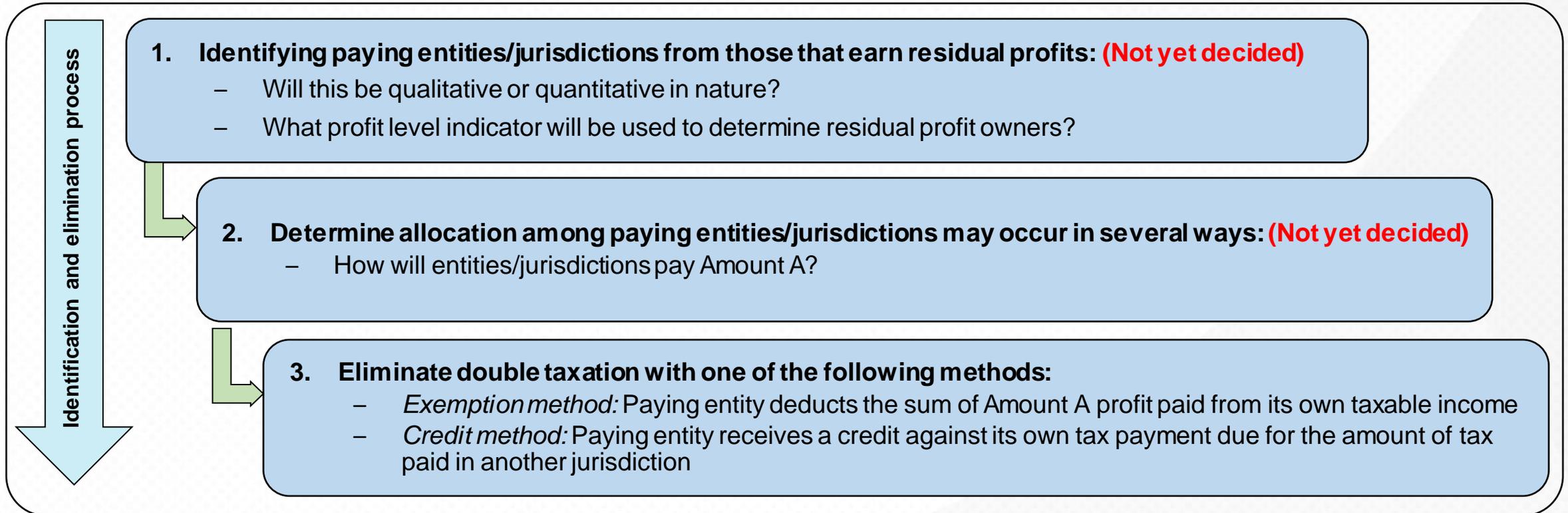
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# Eliminate double taxation

Who will pay, and how will double taxation be eliminated?

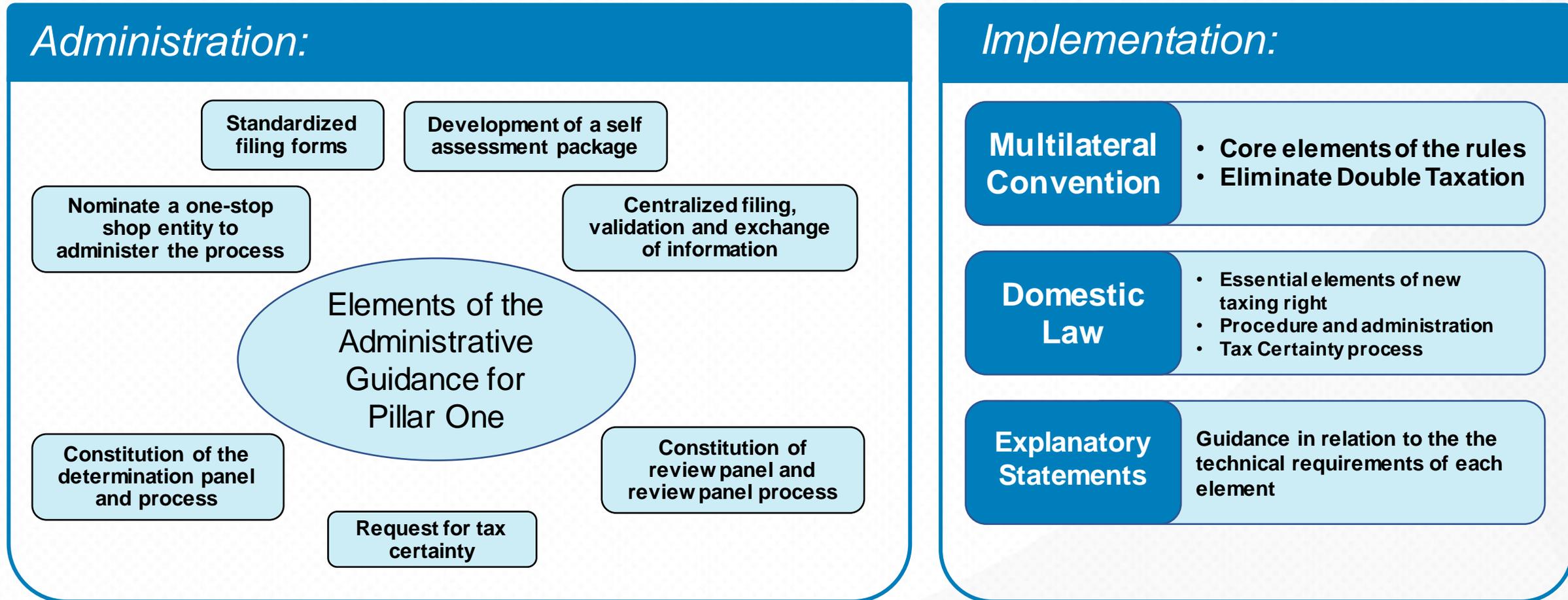
**The OECD Public Consultation Paper on Elimination of Double Taxation has not yet been released**



[www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm](http://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm)

# Administration and Implementation

The OECD Public Consultation Paper on Administration/Implementation have not yet been released



OECD/G20 Base Erosion and Profit Shifting, Tax Challenges Arising From the Digitalisation – Report on the Pillar One Blueprint (OECD, Paris, October 2020)

# Dispute resolution

How ***might*** disputes between tax authorities be resolved?

**The OECD Public Consultation Paper on Tax Certainty has not yet been released**

The OECD October Statement notes that In-scope MNEs will benefit from dispute prevention and resolution mechanisms, which will avoid double taxation for Amount A, including all issues related to Amount A (e.g. transfer pricing and business profits disputes), in a mandatory and binding manner.

The October Statement on Pillar One further states that an elective binding dispute resolution mechanism will be available only for issues related to Amount A for developing economies that are eligible for deferral of their BEPS Action 14 peer review and have no or low levels of MAP disputes.

The eligibility of a jurisdiction for this elective mechanism will be reviewed regularly; jurisdictions found ineligible by a review will remain ineligible in all subsequent years.

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05

# Pillar One Next Steps

# BEPS 2.0 – Next Steps and Public Consultation Process

## UPCOMING REQUESTS FOR INPUT

Following the agreement reached in October 2021 by over 135 members of the OECD/G20 Inclusive Framework on BEPS to address the tax challenges arising from digitalization and globalization of the economy, work on the implementation of the two-pillar plan is underway. As part of this next phase, the Inclusive Framework intends to consult stakeholders as follows:

For **Amount A of Pillar One**, Secretariat Working Documents will be released in the coming months on the separate building blocks of Amount A.

This approach, rather than waiting for a comprehensive document to be ready will allow work to continue in parallel, in order to remain within the political timetable agreed in October 2021.

For **Amount B of Pillar One**, a public consultation document would be issued in mid-2022 with a public consultation event to follow the comment period.

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# Question and Answer Session



# Feedback on this workshop?

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