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## Consultation on Pillar One – Amount A: Draft Model Rules for Nexus and Revenue Sourcing

Dear Sir/Madam

The Irish Tax Institute welcomes the opportunity to contribute to the OECD Inclusive Framework public consultation on the Pillar One Draft Model Rules for Nexus and Revenue Sourcing (Draft Rules). We note that the Draft Rules do not reflect consensus regarding the substance of the document and that the stakeholder input received on the Draft Rules will assist members of the Inclusive Framework in further refining and finalising the relevant rules.

We have outlined below the feedback we have received from our members, who are tax professionals that provide tax services and business expertise to Irish owned and multinational businesses.

### 1. Nexus Test

The nexus test is satisfied if an in-scope multinational enterprise (MNE) derives equal to or greater than €1 million/€250,000 (depending on the GDP of the country) from the jurisdiction. In our view, the interaction of the thresholds for the purpose of the nexus test with the revenue sourcing rules in borderline cases could give rise to disputes. Therefore, it is essential that a clearly defined dispute resolution mechanism and process for dealing with such cases is established.

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## 2. Revenue Sourcing Rules

The application of the rules on a transaction-by-transaction basis is a relatively new concept and inherently complex. The level of granularity of information required under this approach means that such information may not be readily available within multinational enterprises (MNEs) given it does not correlate with what is currently reported from a transfer pricing perspective.

While the use of the allocation keys may go some way towards alleviating the administrative burden, the type of information that will be needed for applying either the allocation keys, or the transaction-by-transaction approach is unlikely to be currently captured in the business systems of MNEs.

Businesses will therefore be required to rebuild their systems to document their approach to revenue sourcing. The Draft Rules note that the revenue sourcing rules will be supported by detailed record-keeping requirements, based on a systemic-level review of the approach taken to revenue sourcing rather than a requirement to retain and supply information from every transaction to tax administrations. However, the resultant system adaptations would still be a substantial undertaking.

The Draft Rules state that these detailed requirements will be further elaborated on in the standardised documentation requirements contained in the Model Rules and will be designed in conjunction with tax administrations and businesses. In our view, close consultation with businesses on the development of the documentation requirements will be vital to ensure that businesses have certainty regarding the necessary documentation prior to rebuilding their systems.

The application of the Draft Rules to certain transactions is unclear and will need to be explained in more detail in the Commentary. For example, how do the rules apply in circumstances where say a consultancy firm provides a service to the head office of an MNE group which subsequently results in savings in each of the jurisdictions in which the MNE is based and operates? It is not the 'place of performance of the service' and yet to determine the 'place of use of the service' would be extremely complicated. Even though the contract for the consultancy services may be with the Head Office, the services provided could impact the individual entities across the worldwide organisation.

The Draft Rules provide that a transaction comprising different elements that fall under more than one category is sourced according to its predominant character. However, it is unclear how the predominant test applies to embedded transactions, such as where products and services are provided on a package basis rather than each component of

the transaction being itemised. We note that it is intended that the Commentary will provide examples of when the predominant test would be relevant.

MNEs will be reliant on information received from their customers to operate the rules. This will necessitate modification of existing contracts with customers. Guidance will be necessary on the level of due diligence required to be carried out by in-scope MNEs on the information that they receive from their customers, which must be relied upon by the MNE for the purpose of the application of the revenue sourcing rules. The scope for tax administrations to audit such information must also be considered.

Part 2 of Schedule A states that revenues must be sourced using a 'Reliable Indicator', or, if the required conditions are met, an 'Allocation Key'. One of the conditions for the indicator to be considered reliable is that it is "*relied upon by the Covered Group for commercial purposes or to fulfil legal, regulatory, or other related obligations.*" In our view, this condition could potentially involve an element of subjectivity and it would be preferable for the condition to refer to the indicator being functionally equivalent to use for commercial, legal, regulatory, or other related obligations.

It is critical that close engagement with business continues throughout the development of the Model Rules and the Commentary to ensure that the practical challenges and the complexities involved for businesses can be fully understood. As businesses will require certainty regarding the operation of the Model Rules prior to rebuilding their systems, the impact of any potential delays in the publication of the final Model Rules and the Commentary must also be considered.

The *Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* states that the Multilateral Convention (MLC) through which Amount A will be implemented, will be developed, and opened for signature in 2022, with Amount A coming into effect in 2023. This means it is possible that a country may sign the MLC but subsequently, does not ratify it. It would be important that consideration is given to the operation of the rules in such circumstances.

Please contact Anne Gunnell of this office at [agunnell@taxinstitute.ie](mailto:agunnell@taxinstitute.ie) if you require any further information in relation the above matters.

Yours sincerely



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