

**Multilateral Convention  
to Facilitate the Implementation of the Pillar Two  
Subject to Tax Rule**

*The Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule was adopted on 15 September 2023 by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS).*

The Parties to this Convention,

Welcoming the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (hereinafter referred to as the “OECD/G20 Inclusive Framework Two-Pillar Solution”);

Noting that as part of the OECD/G20 Inclusive Framework Two-Pillar Solution a subject to tax rule was developed and is an integral part of achieving a consensus for developing countries;

Noting that as part of the OECD/G20 Inclusive Framework Two-Pillar Solution, members of the OECD/G20 Inclusive Framework have agreed to develop a multilateral instrument to facilitate the implementation of the subject to tax rule in certain existing agreements for the avoidance of double taxation on income and ensure swift, coordinated and consistent implementation of the subject to tax rule; and

Recognising that the subject to tax rule is implemented in existing agreements for the avoidance of double taxation on income as part of the implementation of the OECD/G20 Inclusive Framework Two-Pillar Solution and that the provisions in this Convention do not otherwise reflect the tax treaty policies of members of the OECD/G20 Inclusive Framework;

Have agreed as follows:

## **PART I.**

### **SCOPE AND INTERPRETATION OF TERMS**

#### ***Article 1 – Scope of the Convention***

This Convention applies to and amends all Covered Tax Agreements as defined in subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms).

#### ***Article 2 – Interpretation of Terms***

1. For the purpose of this Convention, the following definitions apply:
  - a) The term “Covered Tax Agreement” means an agreement for the avoidance of double taxation with respect to taxes on income (whether or not other taxes are also covered):
    - (i) that is in force between two:
      - A) Parties; and/or
      - B) jurisdictions or territories which are parties to an agreement described above and for whose international relations a Party is responsible; and
    - (ii) with respect to which each such Party has made a notification to the Depositary listing the agreement as well as any amending or accompanying instruments thereto (identified by title, names of the parties, date of signature, and, if applicable at the time of the notification, date of entry into force) as an agreement which it wishes to be covered by this Convention.
  - b) The term “Party” means a State for which this Convention is in force pursuant to Article 11 (Entry into Force).
  - c) The term “Contracting Jurisdiction” means a party to a Covered Tax Agreement.
  - d) The term “Signatory” means a State which has signed this Convention but for which the Convention is not yet in force.

2. As regards the application of this Convention at any time by a Party, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at that time under the relevant Covered Tax Agreement.

## **PART II.**

### **INCLUSION OF ANNEXES IN COVERED TAX AGREEMENTS**

#### ***Article 3 – Inclusion of Annex I (The subject to tax rule) in a Covered Tax Agreement***

Annex I (The subject to tax rule) shall be included in all Covered Tax Agreements and shall form an integral part thereof.

#### ***Article 4 – Inclusion of Annex II (Additions to the subject to tax rule: Taxes computed on an alternative basis) in a Covered Tax Agreement***

1. A Party shall notify the Depositary of whether it applies a tax calculated other than on a net income basis that is covered under subparagraph b) of paragraph 5 of Article 1 in Annex I (The subject to tax rule, Meaning of “tax rate”) and if so, the name of the tax and legal references.

2. Where one Contracting Jurisdiction to a Covered Tax Agreement has made a notification under paragraph 1, Annex II (Additions to the subject to tax rule: Taxes computed on an alternative basis) shall be included in that Covered Tax Agreement and shall form an integral part thereof.

#### ***Article 5 – Inclusion of Annex III (Additions to the subject to tax rule: Taxes imposed at the point of distribution) in a Covered Tax Agreement***

1. A Party shall notify the Depositary of whether it does not impose corporate income tax on items of covered income when that income is earned, but instead imposes tax at the point of profit distribution and if so, the name of the tax and legal references.

2. Where one Contracting Jurisdiction to a Covered Tax Agreement has made a notification under paragraph 1, Annex III (Additions to the subject to tax rule: Taxes imposed at the point of distribution) shall be included in that Covered Tax Agreement and shall form an integral part thereof.

#### ***Article 6 – Inclusion of Annex IV (Additions to the subject to tax rule: Recognised pension fund) in a Covered Tax Agreement***

1. A Party may choose to include the definition of the term “recognised pension fund” in Annex IV (Additions to the subject to tax rule: Recognised pension fund) for the purposes of applying subparagraph c) of paragraph 8 of Article 1 in Annex I (The subject to tax rule, Exclusions).

2. Each Party that chooses to include the definition of the term “recognised pension fund” in Annex IV (Additions to the subject to tax rule: Recognised pension fund) shall notify the Depositary of its choice. Such notification shall also include the list of its Covered Tax Agreements in which that Party chooses to include such a definition.

3. Where one Contracting Jurisdiction to a Covered Tax Agreement has made a notification under paragraph 2, Annex IV (Additions to the subject to tax rule: Recognised pension fund) shall be included in that Covered Tax Agreement and shall form an integral part thereof.

***Article 7 – Inclusion of Annex V (Additions to the subject to tax rule: Circuit-breaker provision) in a Covered Tax Agreement***

1. A Party may choose to include Annex V (Additions to the subject to tax rule: Circuit-breaker provision) in its Covered Tax Agreements. This choice shall apply to all of that Party's Covered Tax Agreements.
2. Each Party that chooses to include Annex V (Additions to the subject to tax rule: Circuit-breaker provision) in its Covered Tax Agreements shall notify the Depositary of its choice.
3. Where one Contracting Jurisdiction to a Covered Tax Agreement has made a notification under paragraph 2, Annex V (Additions to the subject to tax rule: Circuit-breaker provision) shall be included in that Covered Tax Agreement and shall form an integral part thereof.

**PART III.**

**FINAL PROVISIONS**

***Article 8 – Signature and Ratification, Acceptance or Approval***

1. As of 2 October 2023, this Convention shall be open for signature by all States.
2. This Convention is subject to ratification, acceptance or approval.

***Article 9 – Reservations***

No reservations may be made to this Convention.

***Article 10 – Notifications***

1. Notifications pursuant to the following provisions shall be made at the time of signature or when depositing the instrument of ratification, acceptance or approval:
  - a) Subdivision ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms);
  - b) Paragraph 1 of Article 4 (Inclusion of Annex II (Additions to the subject to tax rule: Taxes computed on an alternative basis) in a Covered Tax Agreement);
  - c) Paragraph 1 of Article 5 (Inclusion of Annex III (Additions to the subject to tax rule: Taxes imposed at the point of distribution) in a Covered Tax Agreement);
  - d) Paragraph 2 of Article 6 (Inclusion of Annex IV (Additions to the subject to tax rule: Recognised pension fund) in a Covered Tax Agreement);
  - e) Paragraph 2 of Article 7 (Inclusion of Annex V (Additions to the subject to tax rule: Circuit-breaker provision) in a Covered Tax Agreement); and
  - f) Paragraph 6 of Article 12 (Entry into effect).
2. Notifications in respect of Covered Tax Agreements entered into by or on behalf of a jurisdiction or territory for whose international relations a Party is responsible shall be made by the responsible Party. The notifications of that Party, or made by that Party in respect of Covered Tax Agreements entered into by or on behalf of a jurisdiction or territory for whose international relations that Party is responsible, can be different.

3. If notifications are made at the time of signature, they shall be confirmed upon deposit of the instrument of ratification, acceptance or approval, unless the document containing the notifications explicitly specifies that it is to be considered definitive.

4. If notifications are not made at the time of signature, a provisional list of expected notifications shall be provided at that time.

5. A Party may extend at any time the list of agreements notified under subdivision ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms) by means of a notification addressed to the Depositary. The Party shall specify in this notification whether any additional notifications may be required under subparagraphs b) through d) of paragraph 1 to reflect the inclusion of the additional agreements. In addition, if the extension results for the first time in the inclusion of a tax agreement entered into by or on behalf of a jurisdiction or territory for whose international relations a Party is responsible, the Party shall specify any notifications applicable to Covered Tax Agreements entered into by or on behalf of that jurisdiction or territory. On the date on which the added agreement(s) notified under subdivision ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms) become Covered Tax Agreements, the provisions of paragraph 4 of Article 12 (Entry into Effect) shall govern the date on which this Convention shall have effect.

6. The competent authorities of Contracting Jurisdictions to a Covered Tax Agreement shall notify each other in writing of any provisions in the Covered Tax agreement described in

- a) paragraph 1 of Article 1 in Annex I (The subject to tax rule, Taxing right in source Jurisdiction where covered income taxed at below minimum rate);
- b) subparagraph a) of paragraph 4 of Article 1 in Annex I (The subject to tax rule, Covered income);
- c) subparagraph c) of paragraph 4 of Article 1 in Annex I (The subject to tax rule, Covered income);
- d) subparagraph b) of paragraph 6 of Article 1 in Annex I (The subject to tax rule, Preferential adjustment);
- e) subparagraph b) of paragraph 13 of Article 1 in Annex I (The subject to tax rule, Application to permanent establishment in source Jurisdiction); and
- f) paragraph 15 of Article 1 in Annex I (The subject to tax rule, Elimination of double taxation).

7. The competent authority of a Contracting Jurisdiction to a Covered Tax Agreement shall notify the competent authority of the other Contracting Jurisdiction in writing where the first-mentioned Contracting Jurisdiction satisfies the condition within clause B) of subdivision (ii) of subparagraph a) of paragraph 12 of Article 1 in Annex I (The subject to tax rule, Materiality threshold).

#### ***Article 11 – Entry into Force***

1. This Convention shall enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of the second instrument of ratification, acceptance or approval.

2. For each Signatory ratifying, accepting, or approving this Convention after the deposit of the second instrument of ratification, acceptance or approval, the Convention shall enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit by such Signatory of its instrument of ratification, acceptance or approval.

#### ***Article 12 – Entry into Effect***

1. Subject to the other paragraphs in this Article, the provisions of this Convention shall have effect with respect to a Covered Tax Agreement on or after the latest of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement.

2. The provisions in Annex I (The subject to tax rule) shall have effect in each Contracting Jurisdiction with respect to a Covered Tax Agreement for taxes levied in accordance with the provisions in Annex I (The subject to tax rule) by a Contracting Jurisdiction, on or after the first day of a fiscal year beginning on or after the expiration of a period of six calendar months from the latest of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement.

3. The provisions in Annex II (Additions to the subject to tax rule: Taxes on an alternative basis), Annex III (Additions to the subject to tax rule: Taxes imposed at the point of distribution), Annex IV (Additions to the subject to tax rule: Recognised pension fund) and Annex V (Additions to the Subject to tax rule: Circuit-breaker provision) shall have effect with respect to a Covered Tax Agreement on the date on which the provisions in Annex I (The subject to tax rule) have effect with respect to that Covered Tax Agreement.

4. For a new Covered Tax Agreement resulting from an extension pursuant to paragraph 5 of Article 10 (Notifications) of the list of agreements notified under subdivision ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms), the provisions of this Convention shall have effect in each Contracting Jurisdiction on the first day of a fiscal year beginning on or after the expiration of a period of six calendar months from the date of the communication by the Depositary of the notification of the extension of the list of agreements.

5. A Party may choose to replace:

- a) the references in paragraph 2 to “the latest of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement”; and
- b) the references in paragraph 4 to “the date of the communication by the Depositary of the notification of the extension of the list of agreements”;

with references to “30 days after the date of receipt by the Depositary of the latest notification by each Contracting Jurisdiction making the notification in paragraph 6 of Article 12 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the relevant provisions of this Convention with respect to that Covered Tax Agreement”.

6. Each Party that chooses to apply paragraph 5 to its Covered Tax Agreement shall notify the Depositary of its choice. Such notification shall cover all of its Covered Tax Agreements.

7. Where at least one Contracting Jurisdiction to a Covered Tax Agreement has made a notification under paragraph 6, paragraph 5 shall apply to that Covered Tax Agreement for both Contracting Jurisdictions.

8. A Party choosing to apply paragraph 5 shall notify the confirmation of the completion of its internal procedures with respect to a Covered Tax Agreement simultaneously to the Depositary and the other Contracting Jurisdiction.

### **Article 13 – Depositary**

1. The Secretary-General of the Organisation for Economic Co-operation and Development shall be the Depositary of this Convention.

2. The Depositary shall notify the Parties and Signatories within one calendar month of:

- a) any signature pursuant to Article 8 (Signature and Ratification, Acceptance or Approval);
- b) the deposit of any instrument of ratification, acceptance or approval pursuant to Article 8 (Signature and Ratification, Acceptance or Approval);
- c) any notification pursuant to paragraphs 1 to 5 of Article 10 (Notifications); and

- d) any other communication related to this Convention.
- 3. The Depositary shall maintain publicly available lists of:
  - a) Covered Tax Agreements; and
  - b) notifications made by the Parties pursuant to paragraphs 1 to 5 of Article 10 (Notifications).

#### **Article 14 – Authentic Texts and Translation into Other Languages**

- 1. The original texts of this Convention, which are equally authentic in English and French, shall be deposited with the Secretary-General of the Organisation for Economic Co-operation and Development.
- 2. For purposes of including Annexes I to V in their Covered Tax Agreements, Contracting Jurisdictions to a Covered Tax Agreement may translate and authenticate Annexes I to V into languages other than English and French.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Paris, the 15<sup>th</sup> day of September 2023, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Organisation for Economic Co-operation and Development.

### **ANNEX I.**

#### **THE SUBJECT TO TAX RULE**

##### **Article 1 – The subject to tax rule**

##### **Taxing right in source Jurisdiction where covered income taxed at below minimum rate**

- 1. Where in accordance with provisions of this agreement that:
  - a) provide that profits of an enterprise of a contracting jurisdiction shall be taxable only in that jurisdiction unless the enterprise carries on business in the other contracting jurisdiction through a permanent establishment situated therein;
  - b) provide that interest or royalties arising in a contracting jurisdiction shall be taxable only in the other contracting jurisdiction, or that limit the rate at which such interest or royalties, or at which any income paid in consideration for the provision of services, may be taxed in the first-mentioned jurisdiction; and
  - c) provide that items of income of a resident of a contracting jurisdiction that are not classified in this agreement as income having a specific character shall be taxable only in that jurisdiction, or that limits the rate at which such items of income may be taxed in the other contracting jurisdiction;

the tax that may be charged in a contracting jurisdiction on an item of covered income arising in that jurisdiction is limited, that income may, notwithstanding those provisions, be taxed in that jurisdiction if it is subject to a tax rate below 9% in the contracting jurisdiction of which the person deriving that income is a resident.



### **Source Jurisdiction taxing right limited to a specified rate**

2. However, the tax charged in accordance with paragraph 1 in the contracting jurisdiction in which the item of covered income arises shall not exceed the specified rate multiplied by the gross amount of the covered income. For the purposes of this Article, and subject to the second sentence of paragraph 3, the specified rate is equal to the difference between 9% and the tax rate determined in accordance with paragraph 5, on that item of covered income in the contracting jurisdiction of which the person deriving that income is a resident.

### **Interaction with other Articles**

3. The provisions of paragraphs 1 and 2 shall not apply where the gross amount of the item of covered income may be taxed, in accordance with any other provision of this agreement, in the contracting jurisdiction in which it arises at a rate equal to or greater than the specified rate, as determined in accordance with paragraph 2. Where, in accordance with any other provision of this agreement, the gross amount of the item of covered income may be taxed in the contracting jurisdiction in which it arises at a rate that is lower than the specified rate, as determined in accordance with paragraph 2, that other provision shall continue to apply and the specified rate shall be reduced by deducting such lower rate.

### **Covered income**

4. For the purposes of this Article:

- a) the term “covered income” means:
  - (i) interest, as defined in provisions of this agreement that provide that interest arising in a contracting jurisdiction shall be taxable only in the other contracting jurisdiction or in provisions that limit the rate at which such interest may be taxed by the first-mentioned jurisdiction (but omitting the words “as used in this Article” if they are in those provisions);
  - (ii) royalties, as defined in provisions of this agreement that provide that royalties arising in a contracting jurisdiction shall be taxable only in the other contracting jurisdiction or in provisions that limit the rate at which such royalties may be taxed by the first-mentioned jurisdiction (but omitting the words “as used in this Article” if they are in those provisions);
  - (iii) payments made in consideration for the use of, or the right to use, distribution rights in respect of a product or service;
  - (iv) insurance and reinsurance premiums;
  - (v) fees to provide a financial guarantee, or other financing fees;
  - (vi) rent or any other payment for the use of, or the right to use, industrial, commercial or scientific equipment; or
  - (vii) any income received in consideration for the provision of services.
- b) Notwithstanding the provisions of subparagraph a), the term “covered income” does not include:
  - (i) rent or any other payment for the use of, or the right to use, a ship to be used for the transportation of passengers or cargo in international traffic on a bare boat charter basis; or
  - (ii) items of income derived by a person whose tax liability in respect of that income, under the laws of a contracting jurisdiction, is determined by reference to the tonnage of a ship.
- c) Provisions of this agreement described in paragraph 1 that describe conditions under which an item of covered income is deemed to arise in a contracting jurisdiction shall apply to determine whether that item of covered income is deemed to arise in that contracting jurisdiction pursuant to this Article.

- d) In the absence of provisions described in subparagraph c), an item of covered income shall be deemed to arise in a contracting jurisdiction when the payer is a resident of that jurisdiction. Where, however, the person paying the item of covered income, whether he is a resident of a contracting jurisdiction or not, has in a contracting jurisdiction a permanent establishment in connection with which the liability to pay the item of covered income was incurred, and such item of covered income is borne by such permanent establishment, then such item of covered income shall be deemed to arise in the jurisdiction in which the permanent establishment is situated.

#### **Meaning of “tax rate”**

5. For the purposes of this Article:

- a) the tax rate on an item of covered income in the contracting jurisdiction of which the person deriving that income is a resident is the statutory rate of tax applicable in that jurisdiction on such income; however, where that person benefits from a preferential adjustment in respect of such income in that jurisdiction, the tax rate shall be determined after taking into account the effect of that preferential adjustment;
- b) the taxes to be taken into account for the purposes of the tax rate determination are the taxes covered under this agreement and any tax on net income (“relevant taxes”); and
- c) the competent authorities of the contracting jurisdictions shall, so far as it is relevant for the application of this Article, notify each other in writing of:
  - (i) the statutory rate (or any changes to those rates) applicable to residents of that contracting jurisdiction with respect to items of covered income; and
  - (ii) the provisions of their taxation law (or any changes to those provisions) that apply to items of covered income of residents of that contracting jurisdiction and may result in a preferential adjustment.

#### **Preferential adjustment**

6.

- a) For the purposes of this Article, a preferential adjustment in respect of an item of covered income means a permanent reduction in the amount of the covered income subject to tax, or the tax payable on that income, in the contracting jurisdiction of which the person deriving the covered income is a resident, in the form of:
  - (i) a full or partial exemption or exclusion from income;
  - (ii) a deduction from the tax base that is computed on the basis of the amount of income and without regard to any corresponding payment or obligation to make a payment; or
  - (iii) a tax credit, excluding a credit for foreign taxes paid on the income, that is computed on the basis of the amount of income or tax on such income;that is directly linked to the item of covered income or that arises under a regime that provides a tax preference for income from geographically mobile activities.
- b) For the purposes of this paragraph:
  - (i) no account shall be taken of any obligation to:
    - A) exempt from tax income derived by a resident of that contracting jurisdiction which may be taxed in the other contracting jurisdiction in accordance with the provisions of this agreement that require a contracting jurisdiction to exempt from tax income derived by a resident of a contracting jurisdiction which may be taxed in the other contracting jurisdiction in accordance with the provisions of this agreement; or

- B) provide a deduction or credit in respect of tax paid with respect to income derived by a resident of that contracting jurisdiction which may be taxed in the other contracting jurisdiction according to the provisions of this agreement; and
- (ii) the term “permanent reduction” means a reduction that is not expected to reverse over time. However, a permanent reduction shall also be deemed to arise where the person deriving an item of covered income has control over the point at which that income is recognised for tax purposes in the contracting jurisdiction of which that person is a resident and that income is not recognised for tax purposes in that jurisdiction within three years following the end of the fiscal year in which that income arises.

#### **Covered income attributable to permanent establishment in third jurisdiction**

7. Where:

- a) for the purposes of paragraph 1 the tax rate applicable to an item of covered income arising in a contracting jurisdiction and derived by an enterprise of the other contracting jurisdiction is below 9%; and
- b) that item of covered income is treated as attributable to a permanent establishment of the enterprise situated in a third jurisdiction by both the last-mentioned contracting jurisdiction and the third jurisdiction;

the tax rate referred to in paragraph 5 shall be determined by reference to the statutory rate, and the effect of any preferential adjustment, applicable in that third jurisdiction to the item of covered income attributable to that permanent establishment (as if the references in subparagraph a) of paragraph 5 and paragraph 6 to the person deriving the income and its jurisdiction of residence were, respectively, to the permanent establishment and the jurisdiction in which it is situated), if that rate after any preferential adjustment is higher than the applicable tax rate in the last-mentioned contracting jurisdiction.

#### **Exclusions**

8. The preceding provisions of this Article shall not apply to an item of covered income arising in a contracting jurisdiction paid by an individual or derived by a resident of the other contracting jurisdiction that is:

- a) an individual;
- b) not connected to the payer;
- c) a recognised pension fund, a pension fund, a recognised pension scheme, or a pension scheme;
- d) a non-profit organisation that is established and maintained exclusively for religious, charitable, scientific, artistic, cultural, sporting, educational, or other similar purposes;
- e)
  - (i) that other jurisdiction itself, or a political subdivision or local authority thereof;
  - (ii) the central bank;
  - (iii) an agency, mandatary or instrumentality of, or an entity or arrangement established or created by, a contracting jurisdiction, political subdivision or local authority; and
  - (iv) any other person wholly or almost wholly owned directly or indirectly by a contracting jurisdiction, its political subdivisions or local authorities, agencies, mandataries or instrumentalities,

provided, in the case of subdivisions (iii) or (iv), that their principal purpose is to fulfil a government function, and that they do not carry on a trade or business;

- f) an international organisation;

- g) a professionally managed entity or arrangement designed to invest funds obtained from unconnected persons primarily to generate investment income or to provide protection against an event, for the benefit of those persons provided that the entity or arrangement, or its managers, are regulated. A company that is subject to regulation in that other contracting jurisdiction as an insurance company is deemed to satisfy this subparagraph, but only to the extent the covered income is derived from assets held for the purpose of meeting policyholder liabilities;
- h) an entity or arrangement the taxation of which achieves a single level of taxation either in the hands of the entity or arrangement or its interest holders (with at most one year of deferral) provided that the entity or arrangement is widely held and either:
  - (i) holds predominantly immovable property; or
  - (ii) the entity or arrangement or its interest holders (excluding persons described in this paragraph) are subject to a tax rate of at least 9% in the contracting jurisdiction of which the entity or arrangement is a resident; or
- i) an entity or arrangement that is wholly or almost wholly owned (directly or indirectly), or established or created, by one or more persons, entities, or arrangements referred to in subparagraphs c) to h):
  - (i) that is established and operated exclusively or almost exclusively to hold assets or manage or invest funds for the benefit of a person, entity, or arrangement referred to in subparagraphs c) to h) or that only carries out activities that are ancillary to those carried out by a person, entity, or arrangement referred to in subparagraphs c) to h); and
  - (ii) in the case of a person, entity or arrangement referred to in subparagraph e), is established and operated exclusively or almost exclusively to conduct the activities in subdivision (i) or to conduct related investment activities for a person, entity or arrangement referred to in that subparagraph.

#### **Mark-up threshold**

9. The provisions of paragraphs 1 and 2 shall not apply to payments made in consideration for the use of, or the right to use, distribution rights in respect of a product or service; insurance and reinsurance premiums; fees to provide a financial guarantee, or other financing fees; rent or any other payment for the use of, or the right to use, industrial, commercial or scientific equipment; or any income received in consideration for the provision of services if the gross amount of the item or items of covered income does not exceed an amount equal to the costs incurred by the person deriving the income and that are directly or indirectly attributable to earning the income plus a mark-up of 8.5% on those costs. For the purposes of this paragraph:

- a) all income derived by a person under the terms of a single contractual arrangement during a fiscal year with respect to the same category of covered income and all costs incurred during the same fiscal year and that are directly and indirectly attributable to earning that covered income shall be aggregated for the purpose of determining the mark-up on costs;
- b) all income derived by a person during a fiscal year with respect to more than one contractual arrangement or category of covered income, and all costs incurred during the same fiscal year and that are directly or indirectly attributable to earning that covered income, shall be aggregated for the purpose of determining the mark-up on costs if, taken as a whole, the covered income is so interrelated that an aggregate analysis is more reliable;
- c) where a person deriving income in consideration for the provision of services incurs costs that are directly or indirectly attributable to earning that income and such costs include costs from transactions with a person that is a resident of a third jurisdiction and connected to the person deriving the income, the costs incurred from those transactions shall be disregarded to the extent that they exceed 80% of total costs if the connected person that is a resident of a third jurisdiction is subject, in respect of the income received from those transactions, to a tax rate below 9% in that third jurisdiction and:

- (i) the connected person provides the services directly to the person paying the consideration for the provision of services; or
- (ii) the connected person enters into transactions with another person connected to the person deriving the income and that other person is subject, in respect of the income derived from those transactions, to a tax rate below 9% in the jurisdiction of which that other person is a resident and that other person provides the services directly to the person paying the consideration of the provision of services.

This paragraph does not apply where the item of covered income is an original or related payment, within the meaning of paragraph 11, in respect of which the conditions in subparagraphs a) to c) of paragraph 11 are met.

### **Connected persons**

10. For the purposes of this Article, a person shall be considered to be connected to another person if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons. In any case, a person shall be considered to be connected to another person if:

- a) one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company); or
- b) another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in each person.

### **Connected persons – targeted anti-avoidance rule**

11. Where:

- a) a payment of an item of covered income arising in a contracting jurisdiction ("the original payment") is made by a person other than an individual to a resident of either contracting jurisdiction (the "intermediary"); and
- b) the intermediary at any time during a 365 day period that includes the day of the original payment pays, directly or indirectly, an amount equal to all or substantially all of the original payment, in the form of payments ("related payments"):
  - (i) to a person or persons (the "connected payee"), other than a person described in paragraph 8, that is connected to the person making the original payment;
  - (ii) the connected payee is subject, in respect of the related payments, to a tax rate below 9% in the jurisdiction of which it is a resident and a statutory rate of tax in the jurisdiction of which the intermediary is a resident (taking into account of any reduction in that rate by virtue of a double taxation convention) ("intermediary tax rate") that is also below 9%; and
  - (iii) if the intermediary includes the original payment in its taxable income in the contracting jurisdiction of which it is a resident, the related payments are deductible in computing its taxable income in that jurisdiction; and
- c) it is reasonable to conclude that the intermediary would not have made the related payments in the absence of the original payment;

the original payment made to an intermediary or any related payment made to a connected payee that is a resident of the other contracting jurisdiction shall be treated, for the purposes of this Article, as if it had been covered income paid to a person connected to the payer that is a resident of that other jurisdiction

and the tax rate to which that item of covered income is subject shall be treated for the purposes of paragraphs 1, 2 and 5 as being:

- d) in the case where the original payment is made to an intermediary that is a resident of that other jurisdiction, the higher of the tax rate to which the connected payee is subject, in respect of the related payments, in the jurisdiction of which it is a resident and the intermediary tax rate; or
- e) in the case where the original payment is made to an intermediary that is a resident of the contracting jurisdiction in which that item of covered incomes arises, the tax rate to which the connected payee is subject, in respect of the related payments, in the jurisdiction of which it is a resident.

### **Materiality threshold**

12.

- a) The provisions of paragraphs 1 and 2 shall not apply to an item of covered income arising in a contracting jurisdiction and derived by a person that is a resident of the other contracting jurisdiction (the “tested payee”) unless the sum of:
  - (i) the gross amount of covered income paid by one or more residents of the first-mentioned contracting jurisdiction that are connected to the tested payee and derived by the tested payee or one or more residents of the other jurisdiction that are connected to the tested payee; and
  - (ii) the gross amount of covered income borne by one or more permanent establishments situated in the first-mentioned jurisdiction through which the tested payee, or persons that are connected to the tested payee, carry on business and derived by the tested payee or one or more residents of the other jurisdiction that are connected to the tested payee;
    - A) is equal to or greater than €1 million in the fiscal year concerned; or
    - B) is equal to or greater than €250 000 in the fiscal year concerned, where one of the contracting jurisdictions to this agreement has a gross domestic product of less than €40 billion on the date that the provisions in this Annex have effect with respect to this agreement.
- b) For the purposes of this paragraph:
  - (i) no account shall be taken of the tax rate that is applicable to the covered income in that other jurisdiction; and
  - (ii) persons shall be deemed not to be connected if those persons are otherwise connected solely because of control exercised, or any beneficial interest (or, in the case of a company, the aggregate vote and value of the company’s shares or beneficial equity interest) possessed directly or indirectly by a person, entity or arrangement described in:
    - A) subparagraph e) of paragraph 8; or
    - B) subparagraph i) of paragraph 8, replacing the references to “subparagraphs c) to h)” with “subparagraph e)”.

### **Application to permanent establishment in source Jurisdiction**

13. If the person deriving the item of covered income, being a resident of a contracting jurisdiction, carries on business in the other contracting jurisdiction in which that income arises through a permanent establishment situated therein, the provisions of paragraphs 1 and 2 shall not apply:

- a) to interest and royalties if the debt claim, right or property in respect of which the interest or royalties are paid is effectively connected with that permanent establishment;

- b) to other items of covered income to the extent that they are attributable to that permanent establishment in accordance with the provisions of this agreement that provide that profits of an enterprise of a contracting jurisdiction shall be taxable only in that jurisdiction unless the enterprise carries on business in the other contracting jurisdiction through a permanent establishment situated therein.

In such case, the last-mentioned provisions shall apply.

### **Administration**

14. The tax chargeable in accordance with the provisions of this Article in a contracting jurisdiction in respect of an item of covered income arising in that jurisdiction and derived by a resident of the other contracting jurisdiction in a fiscal year shall be determined following the end of that fiscal year and shall not be levied by the first-mentioned jurisdiction until it is so determined. The competent authorities of the contracting jurisdictions may by mutual agreement settle the mode of application of the provisions contained in this Article.

### **Elimination of double taxation**

15. The application of the provisions of this Article shall not create any obligation under provisions of this agreement that require a contracting jurisdiction to:

- a) exempt from tax income derived by a resident of that contracting jurisdiction which may be taxed in the other contracting jurisdiction in accordance with the provisions of this agreement, to exempt from tax income derived by a resident of a contracting jurisdiction which may be taxed in the other contracting jurisdiction only in accordance with the provisions of this Article; or
- b) provide a deduction or credit in respect of tax paid with respect to income derived by a resident of that contracting jurisdiction which may be taxed in the other contracting jurisdiction according to the provisions of this agreement, to provide a deduction or credit in respect of tax paid in accordance with the provisions of this Article.

### ***Article 2 – Implications of the subject to tax rule***

1. It is understood that the provisions of this Annex are without prejudice to subsequent modifications to this agreement or any other agreement concluded by either of the contracting jurisdictions.

2. Nothing in this Annex shall affect the application of any other provision of this agreement that denies benefits that would otherwise be provided under any provision of the agreement where an item of income is not subject to a certain level of taxation in a contracting jurisdiction.

## **ANNEX II.**

### **ADDITIONS TO THE SUBJECT TO TAX RULE: TAXES COMPUTED ON AN ALTERNATIVE BASIS**

#### ***Article 1 – Additional provisions for taxes computed on an alternative basis***

1. Notwithstanding subparagraph a) of paragraph 5 of Article 1 in Annex I (The subject to tax rule, Meaning of “tax rate”), the tax rate with respect to an item of covered income subject to the tax notified by a contracting jurisdiction that is calculated other than on a net income basis and covered under subparagraph b) of paragraph 5 of Article 1 in Annex I (The subject to tax rule, Meaning of “tax rate”) shall be the rate that results from dividing the total amount of such tax paid by the resident of the first-mentioned

jurisdiction in the year in which the covered income is reflected in its financial statements by the total amount of its net income of that same year reflected in those financial statements.

2. Where a contracting jurisdiction applies both a tax calculated on a net income basis and the tax referred to in paragraph 1 to an item of covered income, the tax rate on that item of covered income shall be determined by adding together the tax rate determined in accordance with subparagraph a) of paragraph 5 of Article 1 in Annex I (The subject to tax rule, Meaning of “tax rate”), in the case of the tax on a net income basis, and the tax rate determined in accordance with paragraph 1 in the case of the tax calculated other than on a net income basis.

3. If a contracting jurisdiction imposes or makes significant changes to a relevant tax that is not a tax on net income then the competent authorities of the contracting jurisdictions shall agree the applicable tax rate in respect of that tax, or the methodology for determining that rate.

### **ANNEX III.**

#### **ADDITIONS TO THE SUBJECT TO TAX RULE: TAXES IMPOSED AT THE POINT OF DISTRIBUTION**

##### ***Article 1 – Additional provisions for taxes imposed at the point of distribution***

Notwithstanding subparagraph a) of paragraph 5 of Article 1 in Annex I (The subject to tax rule, Meaning of “tax rate”), the tax rate with respect to an item of covered income subject to the taxes notified by a contracting jurisdiction that does not impose corporate income tax on items of covered income when that income is earned, but instead imposes tax at the point of profit distribution shall be the rate that results from dividing the total amount of such tax paid by the resident of the first-mentioned jurisdiction for the year in which the covered income is reflected in its financial statements and the two immediately preceding years by the total amount of its net income for that year and those two immediately preceding years reflected in those financial statements.

### **ANNEX IV.**

#### **ADDITIONS TO THE SUBJECT TO TAX RULE: RECOGNISED PENSION FUND**

##### ***Article 1 – Definition for the exclusion in subparagraph c) of paragraph 8 of Article 1 in Annex I (The subject to tax rule)***

1. The definition in paragraph 2 applies for the purposes of subparagraph c) of paragraph 8 of Article 1 in Annex I (The subject to tax rule, Exclusions) and supersedes, for those purposes only, a definition of “recognised pension fund”, “pension fund”, “recognised pension scheme”, or “pension scheme” in this agreement other than in this Annex.

2.

- a) The term “recognised pension fund” of a jurisdiction means an entity or arrangement established in that jurisdiction that is treated as a separate person under the taxation laws of that jurisdiction and:



- (i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits or other similar amount to individuals and that is regulated as such by that jurisdiction or one of its political subdivisions or local authorities; or
  - (ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision (i).
- b) Where an arrangement established in a contracting jurisdiction would constitute a recognised pension fund under subparagraph a) if it were treated as a separate person under the taxation law of that jurisdiction, it shall be considered, for the purposes of this Annex and Annex I (The subject to tax rule), as a separate person treated as such under the taxation law of that jurisdiction and all the assets and income to which the arrangement applies shall be treated as assets held and income derived by that separate person and not by another person.

## **ANNEX V.**

### **ADDITIONS TO THE SUBJECT TO TAX RULE: CIRCUIT-BREAKER PROVISION**

#### ***Article 1 – Circuit-breaker provision***

1. Where:
  - a) a contracting jurisdiction to this agreement was not classified as a high-income economy by the World Bank Group based on its gross national income per capita using the World Bank Atlas method at any time since 1 July 2020; and
  - b) that same contracting jurisdiction is classified as a high-income economy by the World Bank Group based on its gross national income per capita using the World Bank Atlas method for a period of five consecutive years at any time following the date on which the provisions in Annex I (The subject to tax rule) started to have effect in accordance with Article 12 (Entry into effect);

the application of the provisions in Annex I (The subject to tax rule) shall be suspended with respect to this agreement as of the first day of the fiscal year beginning on or after the expiration of a period of six calendar months from the date on which the contracting jurisdiction mentioned in subparagraphs a) and b) of paragraph 1 is classified as a high-income economy by the World Bank Group based on its gross national income per capita using the World Bank Atlas method for a period of five consecutive years pursuant to subparagraph b).

2. Where paragraph 1 applies with respect to this agreement, the provisions in Annex I (The subject to tax rule) shall have effect with respect to this agreement in each contracting jurisdiction for taxes levied in accordance with the provisions in Annex I (The subject to tax rule) by a contracting jurisdiction, on the first day of a fiscal year beginning on or after the expiration of a period of six calendar months from the date on which the contracting jurisdiction mentioned in subparagraphs a) and b) of paragraph 1 first ceases to be classified as a high-income economy by the World Bank Group based on its gross national income per capita using the World Bank Atlas method.