

REGIONAL CONSULTATIONS ON INTERNATIONAL TAX MATTERS

NOVEMBER 2022



SESSION 2 PILLAR ONE REGIONAL UPDATE



State of play on Amount A

137 IF members joined the October 2021 Statement on a Two-Pillar Solution, reflecting agreement on key features of Pillar One and Two

TFDE is rapidly advancing the work, including through release of multiple consultation documents (July & October Progress Reports)

TFDE is continuing the work on Amount A with a view to organise a signing ceremony for the MLC in the first half of 2023.



Continued support from IF & G20

- IF members expressed strong continued support for Pillar One at their October plenary meeting and emphasised the need to quickly finalise and deliver the MLC.
- Also continued support from G20 as expressed at the recent Finance Ministers meeting (12-13 October):
 - *“We reaffirm our commitment to the swift implementation of the OECD/G20 two-pillar international tax package. We welcome the progress on Pillar One. ... We call on the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) to finalize Pillar One, including remaining issues and by signing the Multilateral Convention in the first half of 2023...”*



Work of the TFDE since October 2021

- **TFDE has significantly advanced technical work on Amount A under an intensive work schedule – with 70+ meeting days since October 2021.**
 - Meetings were focused on translating the October Statement into substantive rules in the form of Model Rules for Domestic Legislation.
 - Latest progress is reflected in the July & October Progress Reports.
 - TFDE will now turn its focus on developing the MLC and its Explanatory Statement.



JULY PROGRESS REPORT: CORE AMOUNT A RULES



Public consultation – July Progress Report

Overview

- **TFDE is currently considering all stakeholder input in its work to refine the rules and deliver the MLC.**
- Overall, stakeholders:
 - Welcomed updated timeline for completing the work on Pillar One;
 - Emphasised the importance of stabilising the international tax framework (with strong support for withdrawal and standstill commitment for unilateral measures); and
 - Provided substantial technical feedback aimed at improving the design of the different building blocks, with questions on the ability of specific features to achieve their intended objective.



Public consultation – July Progress Report

Specific comments (I)

Building block

Key requests & comments by stakeholders

Main scope provisions

- Additional exclusion for domestic oriented businesses;
- Averaging on permanent basis and applied to revenues & profitability.

Extractives Exclusion

- Exceptional segmentation rule should not apply;
- Expand the definition of Primary Processing and excluded commodities;
- Support for transition period, with request for technical corrections.

Regulated Financial Services Exclusion

- Technical clarifications of the definition & additional simplification measures for applying the rule;
- Strong support for exclusion of reinsurance and asset management.

Exceptional segmentation rule

- Broad support for the proposal to limit segmentation to Disclosed Segments only;
- Call for simplifications to limit use of complex bespoke data;
- Further clarifications on transitional issues

Nexus & Revenue Sourcing Rules

- More specific guidance and guidance should be binding;
- Components: ongoing questions about policy and administrability;
- Support for transition phase and call for extension.



Public consultation – July Progress Report

Specific comments (II)

Building block

Key requests & comments by stakeholders

Allocation Tax Base

- Divergent views on the treatment of profits attributable to non-controlling interests;
- Suggestions for multiple new adjustments and requests to remove some existing adjustments (or make them elective);
- Longer loss carry-forward time limitations;

Marketing and Distribution Profits Safe Harbour (MDSH)

- Questions about the RODP-based metric to differentiate routine/non-routine profit
- Concerns about the offset percentage (Y%)
- Questions about the relevance of a “de minimis” threshold

Withholding taxes (WHTs)

- Divergent views: Business support for taking into consideration WHTs for the purpose of eliminating and preventing double counting, but another group suggesting not taking WHTs into account

Elimination of double taxation

- Questions about the complexity of the multi-tier framework, incl. use of RODP metric to identify jurisdictions in which multinationals earn residual profits
- Support for the concept of a de minimis rule
- Support for the exemption method
- Support for a backstop mechanism to ensure full relief from double taxation



OCTOBER PROGRESS REPORT: ADMINISTRATION & TAX CERTAINTY



Public consultation – October Progress Report

Overview

- **October Progress Report released on 6 October at IF plenary meeting and comments were due 11 November**
- **Contains building blocks not covered in the July Report:**
 - Administration of Amount A
 - Tax Certainty Framework for Amount A
 - Tax Certainty for Issues Related to Amount A
- **Secretariat is currently analysing stakeholders' comments**



Public consultation – October Progress Report

Administration - overview

- The Progress Report aims to consult on broad framework for the administration of Amount A.
- Under the current framework, jurisdictions will be able to self-determine how to tax Amount A income and give double taxation relief, subject to guardrails outlined in the Model Rules and the Multilateral Convention.
- Streamlined and harmonised tax filing rules are provided in the Model Rules to allow entities to meet their income tax obligations through the centrally filed Amount A Tax Return.



Public consultation – October Progress Report

Administration – outstanding Issues

Key open issues within the public consultation:

1. The identification of the entity or entities that will be liable to tax on Amount A
2. Suspension of payment during the Amount A certainty process
3. Provision of timely double taxation relief (back-stop rule)



Public consultation – October Progress Report

Tax certainty - overview

- **Tax Certainty is an integral part of Amount A**
- **October Statement:** “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....”
- Binding certainty for Amount A provided by a **new innovative Tax Certainty Framework**
- For issues related to Amount A: **mandatory binding dispute resolution (elective for certain developing countries)** supplements MAP to ensure tax certainty
- Outcome of dispute resolution mechanism will then be incorporated in Amount A filings.



Public consultation – October Progress Report

Tax certainty – outstanding issues

Key open issues regarding the Tax Certainty Framework for Amount A:

1. Composition of the Determination Panel

Key open issues regarding Tax Certainty for Issues Related to Amount A:

1. Definition of “Related Issue”
2. Materiality threshold
3. Scope Reservations
4. Costs of Procedure
5. Panel composition



SUMMARY AMOUNT A



Status of MLC drafting process

The TFDE has already translated a significant number of building blocks and will complete translation for the majority of building blocks by the end of the year

MLC provisions / ES text drafted

Scope: Main Provisions

Scope: Regulated Financial Services Exclusion

Nexus & Revenue Sourcing

Tax Base Determination

DSTs and other relevant similar measures

Tax Certainty for Issues Related to Amount A

Blocks being translated

Scheduled for end of 2022

Scope: Extractives Exclusion

Scope: Segmentation

Scheduled for start of 2023

Tax Certainty for Amount A

Administration

Blocks under discussion by SGIF

Profit Allocation (MDSH + WHT) + interaction with EODT

MLC specific issues (e.g. Critical Mass / 7-year review)



AMOUNT B



AMOUNT B – RECAP & CONTEXT

- October's Inclusive Framework Statement:
 - *“The application of the arm’s length principle to in-country baseline marketing and distribution activities will be simplified and streamlined, with a particular focus on the needs of low-capacity countries.”*
- Recall of the Amount B objectives:
 - Streamlining the application of the ALP to baseline distributors, saving time and resources both for the taxpayer and the tax administrations;
 - Providing greater certainty in transfer pricing for baseline distributors;
 - Addressing the challenges faced by Low Capacity Jurisdictions which do not have access to local comparables



AMOUNT B – SCOPE

Baseline Marketing and Distribution Activities (BMDA)

- Buy/sell arrangements
- Predominantly wholesale distribution
- Predominantly in-country distribution
- No ownership of IP nor DEMPE
- No R&D nor manufacturing
- No technical or specialized services



definition

Definition of BMDA in the current draft is **stable**



retailing & crossborder sales

Allowed on a **de minimis basis with discussion focused on percentage** ([15]% revenue)

Exclusion of **extractives industry**



commissionaires

Allowed to the extent that they exhibit **economically relevant characteristics**



in practice

- Contract
- Qualitative information
- Quantitative information
- **Substance over form**



AMOUNT B – PRICING

Designing Amount B pricing requires **three steps** 

1

Identify **wholesale independent distributors** in Orbis

- Filtering Orbis through industry codes; independency indicator; availability of information
- Filtering criteria **broadly stable** at WP6/FTA

2

Applying **scoping criteria to target BMDA**

- No R&D; no manufacturing; no ownership of IP
- Filtering criteria **broadly stable** at WP6/FTA

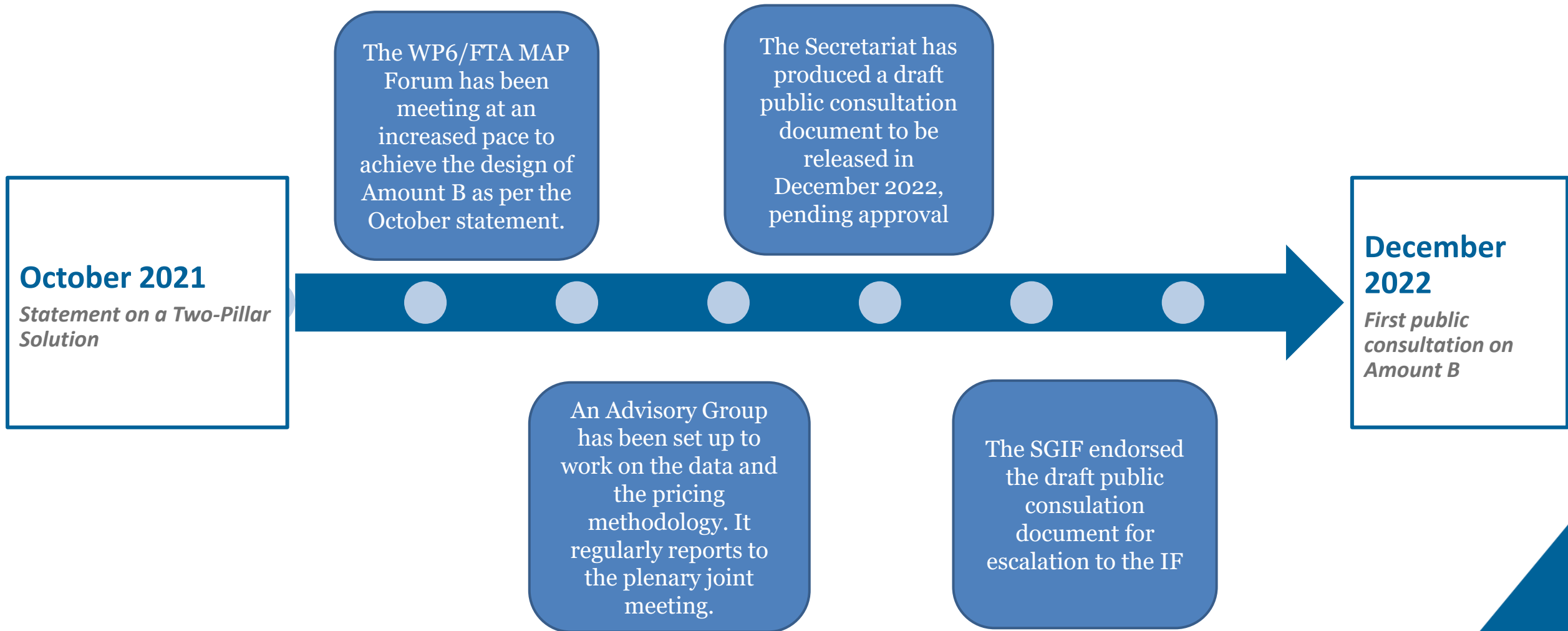
3

Derive **arm's length ranges of operating margins**

- Taking account of taxpayers' relevant economic features – e.g. industry or region
- **Tentative conclusions**



AMOUNT B – PROGRESS AND NEXT STEPS





NEXT STEPS FOR PILLAR ONE



Next steps for Pillar One

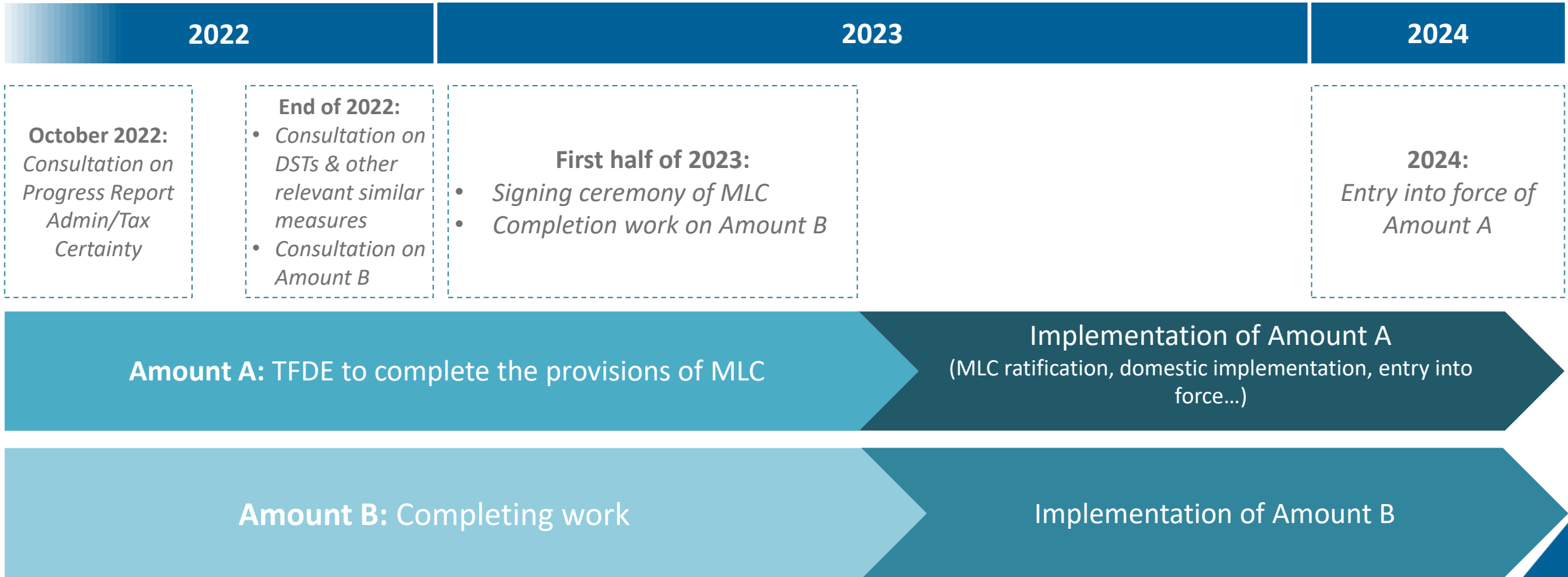
Future public consultations

- IF will continue public consultation process to gather stakeholder input.
- Consultation document on **unilateral measures** to be released in December 2022.
- Consultation document on **Amount B** to be released in December 2022.



Next steps for Pillar One

Overall timeline





ANNEX



Public consultation – October Progress Report

The Administrative Process

Amount A Tax Return and Common Documentation Package based on a common format is submitted to LTA within [12] months of the end of the Period

The LTA exchanges the Amount A Tax Return and Common Documentation Package with Affected Parties within [15] months after the end of the Period

Liabe Entity does not have a Taxable Presence in the Market Jurisdiction

The Amount A Tax Return is accepted as the local tax return in the market jurisdiction

Liabe entity pays tax in the market jurisdiction within [18] months of the end of the Period

Liabe Entity has a Taxable Presence in the Market Jurisdiction, or Entity is claiming double tax relief in Relieving Jurisdiction

Liabe entity includes its Amount A income its local tax return and pays tax by its usual payment deadline. The Amount A Tax Return is for information purposes.

Relief for double taxation is provided in accordance with the Relieving Jurisdiction's tax rules within [x] months of the end of the Period



Public consultation – October Progress Report

A Tax Certainty Framework for Amount A

Scope Certainty

- Provides Group with certainty it is out of scope for a Period
- Likely to be particularly important where a group has excluded revenues
- Simplified follow-up process for Extractives/RFS Groups

Advance Certainty

- Early certainty where Groups most likely to require new methodologies / systems
- Focus on revenue sourcing and excluded revenues
- Certainty provided for a number of years, subject to critical assumptions

Comprehensive Certainty

- Covers all aspects of Amount A that do not already benefit from Advance Certainty
- Transition period including flexible rules and a soft landing for a limited, defined period

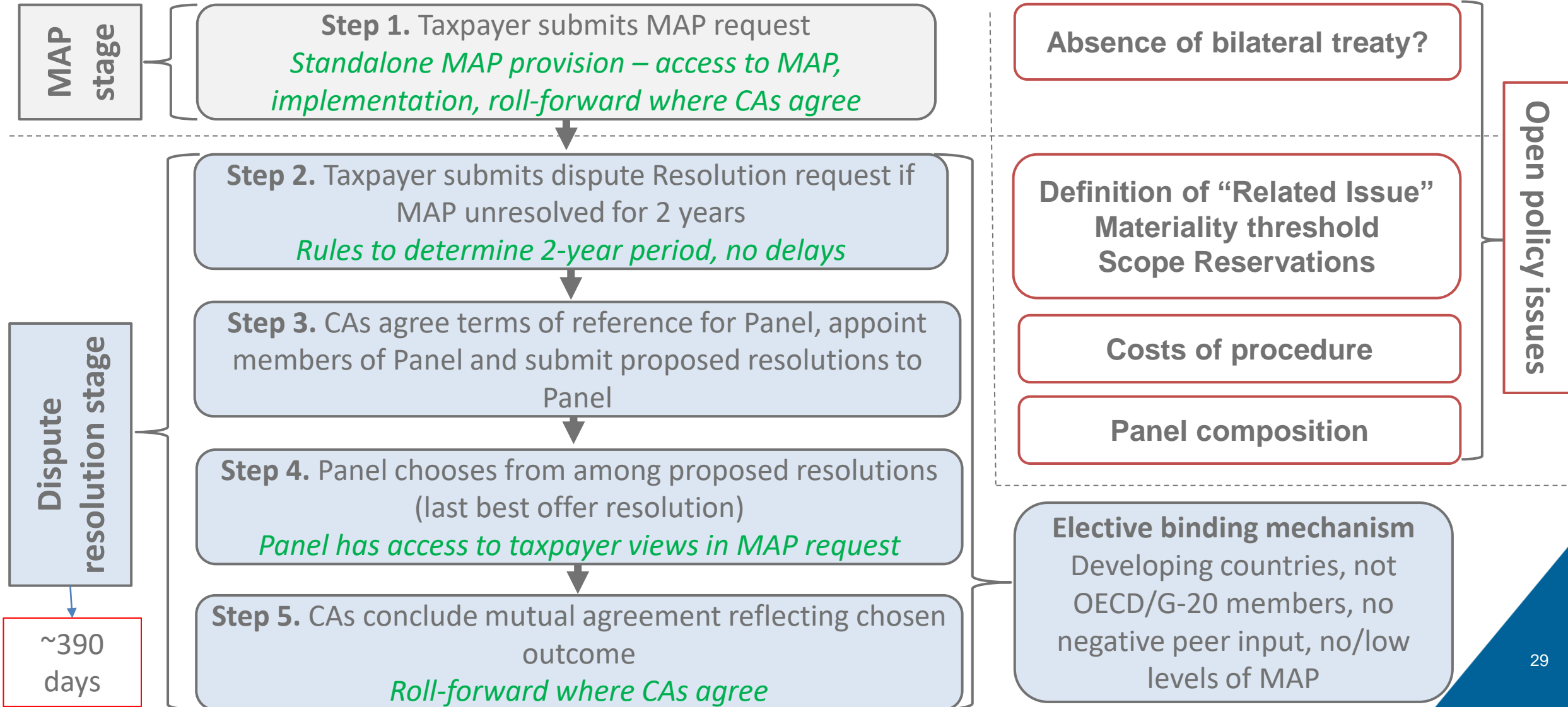
Determination Panel

- Relevant tax administrations have the opportunity to review and object to the outcomes of the review
- Unresolved disagreements are referred to a Determination Panel for a final outcome
- Determination Panel composition is a key outstanding issue in the Progress Report



Public consultation – October Progress Report

Tax Certainty for Issues Related to Amount A



THANK YOU

For more information:

 Contact us by e-mail: ctp.contact@oecd.org

 Visit our public website: www.oecd.org/tax

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