



29 April 2022



Paris France

(via email: [Redacted])

Dear Sir/Madam,

OECD Pillar One - Amount A: Extractives Exclusion Public Consultation Document

The Australian Petroleum Production & Exploration Association (APPEA) is the peak national body representing Australia's oil and gas exploration and production industry. The oil and gas industry plays a fundamental role in our nation's economy, providing essential energy to power businesses and homes in Australia and across the world.

The industry makes a significant contribution to the Australian economy. It has invested over \$450 billion in oil and gas projects and associated infrastructure, paid more than \$150 billion in company tax and resources charges, billions more in export earnings, and supports the employment of 80,000 workers both directly and indirectly. The industry also safeguards the continuity of supply domestically and to our global trading partners ensuring that Australia and its major trading partners can achieve 2050 emissions targets.

From the outset we must acknowledge that Pillar One is intended to address perceived misallocations of multinational business profits among different jurisdictions for tax purposes, due to the use of new business models that rely on intangible assets, the gathering and analysis of data from customers and others in market jurisdictions, and the ability to create scale without mass in a multinational business.

A properly drafted exclusion of extractive activities ensure that the Model Rules will meet the policy intent. The scope of its application will be critical given the importance of communities where extractives activities occur, derive the greatest benefit from the generation of taxes, economic rents and government revenues that are derived from the economic activity occurring from in-country extractive activities.

In our view, the exclusion should apply in the manner outlined in the OECD Blueprint from October 2020. It should apply to renewables as well as all aspects of the extractives value chain. We see no rationale for the inclusion of renewables or midstream and downstream operations of extractives businesses in Pillar One.

These operations have nothing in common with business models that rely on market-based intangibles and data without the need for any physical presence in the market. When the Inclusive Framework members agreed to exclude extractives from the scope of Pillar One, the intention was to exclude extractive businesses as generally understood.

The change to a narrower definition, means that the exclusion and complexities now involved in determining scope will be a burden for companies that should not be covered by Pillar One. This includes separating the revenue and profits of the upstream portion of an extractive business from the midstream and downstream portions of the business, in order to potentially apply the Amount A rules to the latter.

That said, assuming the Model Rules will adopt the narrow approach outlined in the Public Consultation Paper, we suggest that certain changes be made in order to make the rules less burdensome to apply and administer.

Liquefied Natural Gas

We recommend that the processing of third-party gas into LNG be included in *Extractive Activities*. It is unclear how the dual test - the product test (“the sale of an Extractive Product”) and activities test (“conduct Exploration, Development or Extraction”) - would apply where there is both supply of feedstock from extraction as well as third party gas feedstock which is required as feedstock to fill the capacity of the liquefaction train. It would be overly complex to separate liquefaction margins for third party gas versus equity gas.

Additionally, the definition of Qualifying Processing should include storage of LNG, LPG, and crude oil or its equivalent before transportation.

Excluding related-party or integrated business revenue at Step 2

APPEA observes that paragraph 14 of the Public Consultation Paper indicates that for simplicity only third-party revenues are subject to the exclusion at Step 2. Limiting the scope in this manner has the potential to send many extractives businesses to the more complex Step 3 without providing the opportunity to assess whether a delineation can be made consistent with the definition in the Public Consultation Paper and where OECD model rules for transfer pricing have been followed.

APPEA recommends that Step 2 be drafted in a manner that requires extractives businesses to exclude third-party revenues and revenues from integrated projects, including in the circumstances where extractives businesses are relying on the OECD model rules for transfer pricing purposes.

Definition of Delineation Point

The definitions of *Extractive Activities* and *Delineation Point* may result in activities the industry generally views as essential to extraction as being in-scope of Pillar One. Based on our interpretation, there will be instances where *Extractive Activities* reach all the way to the market jurisdiction and some instances where *Extractive Activities* end in the extractive source country.

For clarity and ease of administration, we propose that the definition of *Delineation Point* be changed so that the exclusion would cover all of the revenues associated with sales of hydrocarbons up to the market jurisdiction – that is, the jurisdiction where the hydrocarbons are either sold for consumption or refined into other products. This change would align the *Delineation Point* definition for both related-party sales and unrelated-party sales, which we do not see a policy reason for treating differently.

Internationally Recognised Reference Price

APPEA observes that much of the supporting commentary referenced in the footnotes of the consultation document are critical to the effective operation of the Model Rules. This is evident at footnote 12 where it is suggested that the supporting commentary for paragraph 27(c) under *Delineation Point* indicates that the Henry Hub Price cannot be used as a reference price in Asia.

This context is critical to the effective operation of the exclusion. For example, companies operating in Queensland on the north-east coast of Australia would be able to use the Wallumbilla Hub as a reference point. However, that reference price would not be suitable for operations occurring in the Northern Territory or Western Australia unless significant adjustments are made.

APPEA recommends that the definition of the *Internationally Recognised Reference Price* – either by amendment to paragraph 28(b) or inserting a new point – should make it clear that the price used should accurately reflect the location of extractives product and the most suitable reference price relative to that location.

Transportation

APPEA recommends that the commentary in footnote 9 be included into the Model Rules. We also recommend that the definition define “producer” as any member or entity of the Group that performed the extractive activities, for example an affiliate that purchased the extractive products from the extracting company.

Given that Amount A is determined on a group basis, there would not appear to be any policy reason for requiring the relevant transportation of the extractive products to be undertaken by the extracting company rather than an affiliate.

Segmentation

The Model Rules should confirm that segmentation is only required at Step 1. That is, where the group as a whole does not meet the scoping thresholds, but there is a disclosed segment that does, and not again at any other step. This preserves the intent that segmentation is used only in extraordinary circumstances and ensures that extractives are not subject to any different segmentation rules than other industries.



With respect to the thresholds, APPEA recommends that the threshold under the Disclosed Operating Segment approach should be 75% of revenue. We also recommend removing the second limb of this test that suggest in-scope revenues should not be more than Euro 1 billion.

Consistent with the OECD Statement on the Two Pillar Solution on 8 October 2021, segmentation is only to occur in exceptional circumstances. The inclusion of such a test would create a costly and complex compliance burden for extractives businesses that should otherwise be out of scope of Pillar One.

We would welcome the opportunity to discuss the contents of this letter further with you. If you have any queries or for further information, you can contact me on [REDACTED] or at [REDACTED]

Yours sincerely,

Simon Staples
Director – Policy & Capital Markets