

# 4 Revenue sourcing rules

## 4.1. Overview

218. The revenue sourcing rules determine the revenue that would be treated as deriving from a particular market jurisdiction. The rules would be relevant in applying the scope rules, (see section 2.3.2), the nexus rules (see Chapter 3) and the Amount A formula (see Chapter 6). They are reflective of the particularities of ADS and CFB and more broadly were designed to balance the need for accuracy with the ability of in-scope MNEs to comply, without incurring disproportionate compliance costs. This is proposed to be achieved through the articulation of sourcing principles, supported by a range of specific indicators, subject to a defined hierarchy (likely to be of particular importance in connection with third party distribution). This approach of providing a range of possible indicators within the hierarchy recognises the different ways MNEs currently collect information in the context of their business model, while still providing certainty to MNEs and tax administrations that the defined set of acceptable specified indicators can be relied upon to provide acceptable outcomes.

219. To source the relevant in-scope revenue to a market jurisdiction, a sourcing principle would be identified for each type of in-scope revenue, accompanied by a list of the acceptable specific indicators an MNE will use to apply the principle and identify the jurisdiction of source. For example, for the direct sale of consumer goods, the principle would be to source the revenue based on the jurisdiction of final delivery of the goods to the consumer, and the acceptable indicator would be the jurisdiction of the retail store front where the consumer good is sold or shipping address.

220. The acceptable indicators would be organised in a hierarchy. The MNE should generally use the indicator that is first in the hierarchy, as this will be the most accurate. However, an MNE may use an alternative indicator that appears second in the hierarchy, if the first indicator was not reasonably available or if the MNE can justify that the first indicator was unreliable, and so on with the remaining indicators.

221. This approach is intended to ensure that there is sufficient flexibility to accommodate the different ways that MNEs collect information. The rules provide guidance on when an indicator can be considered to be unavailable or unreliable, to reduce the potential for disputes for tax administrations and taxpayers alike.

222. Information would be considered unavailable if it is not within the MNE's possession, and reasonable steps have been taken to obtain it but have been unsuccessful. Information would be considered unreliable if the MNE can justify that the indicator is not a true representation of the principle in the source rule.

223. The MNE would need to justify and document its approach and include it in the standardised documentation package to be developed as part of the broader work on tax certainty (see Chapter 9). It is expected that an in-scope MNE will need to retain documentation:

- describing the functioning of its internal control framework related to revenue sourcing;
- containing aggregate and periodic information on results of applying the indicators, for each type of revenue and in each jurisdiction; and

- explaining the indicator used, and, if relevant, why a secondary indicator was applied instead (such as the steps taken to obtain information or why a primary indicator was considered unreliable).

224. This information will remain systemic level data. MNEs would thus not be expected to keep a record of all data points on the indicators for every transaction (which may cause concerns relating to privacy) or use of the service, but rather to establish a robust internal control framework on which the tax authorities can rely to conduct their audit, supported by the underlying results of applying the indicators at an aggregate level, as well as retaining a sufficient sample of the underlying data points to justify that the internal control framework is robust.

225. As it is critical to understand the sourcing rule (and its list of indicators) in the context of each relevant business model, commentary accompanies the revenue sourcing rules to further explain the meaning of the different indicators, and provide guidance for MNE's administration. The status of the Commentary in the context of implementation will be considered in due course. The Commentary is set out in section 4.3, following the complete set of rules.

## 4.2. Revenue sourcing rules

226. This section contains draft rules on revenue sourcing. They are categorised under the ADS services and CFB in scope of Amount A. For each type of activity identified as in scope, a sourcing principle is identified, followed by a hierarchical list of the acceptable indicators an MNE may use to locate the jurisdiction of source. In addition, it includes specific rules on documentation requirements for MNEs.

### 4.2.1. General rules

227. An MNE must apply the revenue sourcing rules set out below that are relevant to each type(s) of revenue(s) it generates.

228. An MNE will apply the indicator that appears first in the hierarchy of indicators, unless this information is unavailable or unreliable as noted within each rule.

229. Information is only considered unavailable if it is not within the MNE's possession, and reasonable steps have been taken to obtain the information but these have not been successful.

230. Information is considered unreliable if the MNE can justify that the indicator is not a true representation of the principle in the source rule.

231. If an indicator is unavailable or unreliable, the MNE should seek to apply the next indicator in the hierarchy. In the event that all of the indicators in the hierarchy are unavailable (after having taken reasonable steps to obtain it) or unreliable, the MNE must apply the sourcing rule based on alternative available information and document the approach taken.

232. An MNE must retain documentation as set out in these rules.

233. The following definitions apply to these rules:

- "Developer" means the party that developed the intangible good or service.
- "Independent distributor" means an independent enterprise that is contracted by the MNE to distribute or resell that MNE's goods.
- "Intangible goods / services" means products or services that are not of a physical nature or delivered in physical form, such as downloaded material or advisory services.
- "Jurisdiction" means country or territory that is a jurisdiction for tax purposes.
- "Ordinary residence" means the place a person habitually resides.

- “Other online purchases” mean online purchases of goods or services that are in scope of ADS, or the purchase of additional features within an ADS for which the user pays.
- “Purchaser” means the party making a payment under a contract to acquire a good or service.
- “Seller” means the party providing the good or service under a contract with a purchaser.
- “Tangible goods” means products that are of a physical nature, such as clothing or household items.
- “Tangible services” means services that are delivered in physical form, such as hotel accommodation or transportation.
- “User” means any individual or business accessing a service, but does not include:
  - the provider, or a member of the same MNE group as the provider, of that service;
  - an employee of person referred to in paragraph (a) acting in the course of that person’s business.
- “User profile” means information collected and retained by the MNE about a user.
- “Viewer” means the individual who views an advertisement.

234. All other capitalised terms take their meaning from the Scope of Amount A, in Chapter 2.

#### **4.2.2. Automated digital services (ADS)**

235. These rules first set out a non-exhaustive, indicative list of the type of revenues that ADS businesses typically earn and the revenue sourcing rules they would apply for each separately identifiable revenue stream. Then, it sets out the sourcing rule and relevant indicator per type of revenue.

236. As noted above, revenue from online advertising, sale or other alienation of user data and digital content services are prevalent revenue streams for many types of businesses in scope of ADS, whether contained on the positive list or not. For the purpose of revenue sourcing, whenever an MNE derives revenues from any form of these activities, the revenue will be sourced according to the rules for revenue from that particular activity. Further consideration can be given to whether guidance is needed for cases where a revenue stream cannot be clearly separated, or where a single customer contributes to multiple revenue streams which may not be easily distinguishable.

##### *Revenue from online advertising services*

237. The ADS business of Online Advertising Services generates revenue including:

- Revenue from Online Advertising Services.

##### **Online advertising services based on the real-time location of the viewer**

238. The sourcing rule is the jurisdiction of the real-time location of the viewer of the advertisement.

239. The relevant indicators are:

- a. The jurisdiction of the geolocation of the device of the viewer at the time of display; or if unavailable or unreliable
- b. The jurisdiction of the IP address of the device of the viewer at the time of display; or if unavailable or unreliable
- c. Other available information that can be used to determine the jurisdiction of the real-time location of the viewer.

<b>ADS business</b>	<b>Type of revenue sourcing rules applied</b>
Online Advertising Services	<ul style="list-style-type: none"> <li>• Revenue from online advertising services</li> </ul>
Sale or Other Alienation of User Data	<ul style="list-style-type: none"> <li>• Revenue from sale or other alienation of user data</li> </ul>

Online Search Engines	<ul style="list-style-type: none"> <li>• Revenue from online advertising services</li> <li>• Revenue from sale or other alienation of user data</li> </ul>
Social Media Platforms	<ul style="list-style-type: none"> <li>• Revenue from online advertising services</li> <li>• Revenue from sale or other alienation of user data</li> <li>• Revenue from digital content services</li> </ul>
Online Intermediation Platform Services	<ul style="list-style-type: none"> <li>• Revenue from online advertising services</li> <li>• Revenue from sale or other alienation of user data</li> <li>• Revenue from online intermediation platform services</li> <li>• Revenue from digital content services</li> </ul>
Digital Content Services	<ul style="list-style-type: none"> <li>• Revenue from online advertising services</li> <li>• Revenue from sale or other alienation of user data</li> <li>• Revenue from digital content services</li> </ul>
Online Gaming	<ul style="list-style-type: none"> <li>• Revenue from online advertising services</li> <li>• Revenue from sale or other alienation of user data</li> <li>• Revenue from digital content services</li> </ul>
Standardised Online Teaching Services	<ul style="list-style-type: none"> <li>• Revenue from online advertising services</li> <li>• Revenue from sale or other alienation of user data</li> <li>• Revenue from digital content services</li> </ul>
Cloud Computing Services	<ul style="list-style-type: none"> <li>• Revenue from online advertising services</li> <li>• Revenue from cloud computing services</li> </ul>

### Other online advertising services

240. The sourcing rule is the jurisdiction of the ordinary residence of the viewer of the advertisement.
241. The relevant indicators are:
- a. The jurisdiction of the ordinary residence of the viewer, based on user profile information:
    - i. Information on residence obtained from recurring data on geolocation or IP address of the viewer's device; or if unavailable or unreliable
    - ii. Billing address of the viewer; or if unavailable or unreliable
    - iii. Mobile country code of the phone number of the viewer; or if unavailable or unreliable
    - iv. Information on residence inputted by the viewer; or if unavailable or unreliable
    - v. Other available information that can be used to determine the jurisdiction of the ordinary residence of the viewer; or if unavailable or unreliable
  - b. The jurisdiction of the geolocation of the device of the viewer at the time of display; or if unavailable or unreliable
  - c. The jurisdiction of the IP address of the device of the viewer at the time of display

### *Revenue from the sale or other alienation of user data*

242. The ADS business of Sale or Other Alienation of User Data generates revenue including:
- Revenue from the Sale or Other Alienation of User Data.

### **Sale or other alienation of user data based on the real-time location of the user**

243. The sourcing rule is the jurisdiction of the real-time location of the user that is the subject of the data being transmitted, at the time the data was collected.

244. The relevant indicators are:

- a. The jurisdiction of the geolocation of the device of the user at the time of collection; or if unavailable or unreliable
- b. The jurisdiction of the IP address of the device of the user at the time of collection; or if unavailable or unreliable
- c. Other available information that can be used to determine the jurisdiction of the real-time location of the user.

### **Other sale or other alienation of user data**

245. The sourcing rule is the jurisdiction of the ordinary residence of the user that is the subject of the data being transmitted.

246. The relevant indicators are:

- a. The jurisdiction of the ordinary residence of the user, based on user profile information:
  - i. Information on residence obtained from recurring data on geolocation or IP address of the user's device; or if unavailable or unreliable
  - ii. Billing address of the user; or if unavailable or unreliable
  - iii. Mobile country code of the phone number of the user; or if unavailable or unreliable
  - iv. Information on residence inputted by the user; or if unavailable or unreliable
  - v. Other available information that can be used to determine the jurisdiction of the ordinary residence of the user; or if unavailable or unreliable
- b. The jurisdiction of the geolocation of the device of the user at the time of collection; or if unavailable or unreliable
- c. The jurisdiction of the IP address of the device of the user at the time of collection.

### *Revenue from online search engines*

247. The ADS business of Online Search Engines generates revenue including:

- Revenue from Online Advertising Services; and
- Revenue from the Sale or Other Alienation of User Data.

### *Revenue from social media platforms*

248. The ADS business of Social Media Platforms generates revenue including:

- Revenue from Online Advertising Services;
- Revenue from the Sale or Other Alienation of User Data; and
- Revenue from Digital Content Services.

### *Revenue from online intermediation platform services*

249. The ADS business of Online Intermediation Platform Services generates revenue including:

- Revenue from Online Advertising Services;

- Revenue from the Sale or Other Alienation of User Data;
- Revenue from Online Intermediation Platform Services; and
- Revenue from Digital Content Services.

250. The rule on Online Intermediation Platform Services is designed according to the nature of the goods / services being intermediated, which may be intermediation of tangible goods, intermediation of tangible services and intermediation of intangible goods /services.

#### *Intermediation of tangible goods*

251. The revenue is sourced based on a 50:50 split between the purchaser and the seller.

#### **Purchaser**

252. The sourcing rule with respect to the purchaser is the jurisdiction of the ordinary residence of the purchaser.

253. The relevant indicators are:

- a. The jurisdiction of the delivery address of the purchaser; or if unavailable or unreliable
- b. The jurisdiction of the billing address of the purchaser;<sup>1</sup> or if unavailable or unreliable
- c. The jurisdiction of the ordinary residence of the purchaser based on user profile information:
  - i. Information on residence obtained from recurring data on geolocation or IP address of the purchaser's device; or if unavailable or unreliable
  - ii. Billing address of the user; or if unavailable or unreliable
  - iii. Mobile country code of the phone number of the purchaser; or if unavailable or unreliable
  - iv. Information on residence inputted by the purchaser; or if unavailable or unreliable
  - v. Other available information that can be used to determine the jurisdiction of the ordinary residence of the purchaser; or if unavailable or unreliable
- d. The jurisdiction of the geolocation of the device of the purchaser; or if unavailable or unreliable
- e. The jurisdiction of the IP address of the device of the purchaser.

#### **Seller**

254. The sourcing rule with respect to the seller is the jurisdiction of the ordinary residence of the seller.

255. The relevant indicators are:

- a. The jurisdiction of the principal place of business of the seller (or in case the seller is a natural person, the jurisdiction of the residential address of the seller); or if unavailable or unreliable
- b. The jurisdiction of the ordinary residence of the seller based on user profile information:
  - i. Information on residence obtained from recurring data on geolocation or IP address of the seller's device; or if unavailable or unreliable
  - ii. Billing address of the seller; or if unavailable or unreliable
  - iii. Mobile country code of the phone number of the seller; or if unavailable or unreliable
  - iv. Information on residence inputted by the seller; or if unavailable or unreliable

- v. Other available information that can be used to determine the jurisdiction of the ordinary residence of the seller.

#### *Intermediation of tangible services*

256. The revenue is sourced based on a 50:50 split between the purchaser and the seller.<sup>2</sup>

#### **Purchaser**

257. The sourcing rule with respect to the purchaser is the jurisdiction of the location of the purchaser at the time of purchase.

258. The relevant indicators are:

- a. The jurisdiction of the geolocation of the device of the purchaser; or if unavailable or unreliable
- b. The jurisdiction of the delivery address of the purchaser; or if unavailable or unreliable
- c. The jurisdiction of the IP address of the device of the purchaser; or if unavailable or unreliable
- d. The jurisdiction of the ordinary residence of the purchaser based on user profile information:
  - i. Information on residence obtained from recurring data on geolocation or IP address of the purchaser's device; or if unavailable or unreliable
  - ii. Billing address of the purchaser; or if unavailable or unreliable
  - iii. Mobile country code of the phone number of the purchaser; or if unavailable or unreliable
  - iv. Information on residence inputted by the purchaser; or if unavailable or unreliable
  - v. Other available information that can be used to determine the jurisdiction of the ordinary residence of the purchaser.

#### **Seller**

259. The sourcing rule with respect to the seller is the jurisdiction where the service is performed.

260. The relevant indicators are:

- a. The jurisdiction of the address / location where the service is performed; or if unavailable or unreliable
- b. The jurisdiction of the ordinary residence of the seller based on user profile information:
  - i. Information on residence obtained from recurring data on geolocation or IP address of the seller's device; or if unavailable or unreliable
  - ii. Billing address of the seller; or if unavailable or unreliable
  - iii. Mobile country code of the phone number of the seller; or if unavailable or unreliable
  - iv. Information on residence inputted by the seller; or if unavailable or unreliable
  - v. Other available information that can be used to determine the jurisdiction of the ordinary residence of the seller.

#### *Intermediation of intangible goods / services*

261. The revenue is sourced based on a 50:50 split between the purchaser and the seller.

## Purchaser

262. The sourcing rule with respect to the purchaser is the jurisdiction of the ordinary residence of the purchaser.

263. The relevant indicators are:

- a. The jurisdiction of the ordinary residence of the purchaser based on user profile information:
  - i. Information on residence obtained from recurring data on geolocation or IP address of the purchaser's device; or if unavailable or unreliable
  - ii. Billing address of the purchaser; or if unavailable or unreliable
  - iii. Mobile country code of the phone number of the purchaser; or if unavailable or unreliable
  - iv. Information on residence inputted by the purchaser; or if unavailable or unreliable
  - v. Other available information that can be used to determine the jurisdiction of the ordinary residence of the purchaser; or if unavailable or unreliable
- b. The jurisdiction of the billing address of the purchaser; or if unavailable or unreliable<sup>3</sup>
- c. The jurisdiction of the geolocation of the device of the purchaser; or if unavailable or unreliable
- d. The jurisdiction of the IP address of the device of the purchaser; or if unavailable or unreliable

## Seller

264. The sourcing rule with respect to the seller is the ordinary jurisdiction of the seller.

265. The relevant indicators are:

- a. The jurisdiction of the principal place of business of the seller; (or in case the seller is a natural person, the jurisdiction of the residential address of the seller), or if unavailable or unreliable
- b. The jurisdiction of the ordinary residence of the seller based on user profile information:
  - i. Information on residence obtained from recurring data on geolocation or IP address of the seller's device; or if unavailable or unreliable
  - ii. Billing address of the seller; or if unavailable or unreliable
  - iii. Mobile country code of the phone number of the seller; or if unavailable or unreliable
  - iv. Information on residence inputted by the seller; or if unavailable or unreliable
  - v. Other available information that can be used to determine the jurisdiction of the ordinary residence of the seller

### *Revenue from digital content services*

266. The ADS business of Digital Content Services generates revenue including:

- Revenue from Online Advertising Services;
- Revenue from the Sale or Other Alienation of User Data; and
- Revenue from Digital Content Services.

### **Digital content services**

267. The sourcing rule is the jurisdiction of the ordinary residence of the purchaser.
268. The relevant indicators are:
- c. The jurisdiction of the ordinary residence of the purchaser based on user profile information:
    - vi. Information on residence obtained from recurring data on geolocation or IP address of the purchaser's device; or if unavailable or unreliable
    - vii. Billing address of the purchaser; or if unavailable or unreliable
    - viii. Mobile country code of the phone number of the purchaser; or if unavailable or unreliable
    - ix. Information on residence inputted by the purchaser; or if unavailable or unreliable
    - x. Other available information that can be used to determine the jurisdiction of the ordinary residence of the purchaser; or if unavailable or unreliable
  - d. The jurisdiction of the billing address of the purchaser; or if unavailable or unreliable
  - e. The jurisdiction of the geolocation of the device of the purchaser; or if unavailable or unreliable
  - f. The jurisdiction of the IP address of the device of the purchaser

#### *Revenue from online gaming services*

269. The ADS business of Online Gaming Services generates revenue including:
- Revenue from Online Advertising Services;
  - Revenue from the Sale or Other Alienation of User Data; and
  - Revenue from Digital Content Services.

#### *Revenue from standardised online teaching services*

270. The ADS business of Standardised Online Teaching Services generates revenue including:
- Revenue from Online Advertising Services;
  - Revenue from the Sale or Other Alienation of User Data; and
  - Revenue from Digital Content Services.

#### *Revenue from cloud computing services*

271. The ADS business of Cloud Computing Services generates revenue including:
- Revenue from Online Advertising Services; and
  - Revenue from Cloud Computing Services.
272. The rule on cloud computing is designed according to the nature of the customer, which may be an individual or a business.

### **Individual purchaser**

273. The sourcing rule for a cloud computing service sold to an individual customer is the jurisdiction of ordinary residence of the purchaser.
274. The relevant indicators are:

- a. The jurisdiction of the ordinary residence of the purchaser based on user profile information:
  - i. Information on residence obtained from recurring data on geolocation or IP address of the purchaser's device; or if unavailable or unreliable
  - ii. Billing address of the purchaser; or if unavailable or unreliable
  - iii. Mobile country code of the phone number of the purchaser; or if unavailable or unreliable
  - iv. Information on residence inputted by the purchaser; or if unavailable or unreliable
  - v. Other available information that can be used to determine the jurisdiction of the ordinary residence of the purchaser; or if unavailable or unreliable
- b. The jurisdiction of the billing address of the purchaser; or if unavailable or unreliable
- c. The jurisdiction of the geolocation of the device of the purchaser; or if unavailable or unreliable
- d. The jurisdiction of the IP address of the device of the purchaser

### **Business customer**

275. The sourcing rule for a service intended for internal use by a business customer is the jurisdiction of the location where the business uses the service.<sup>4</sup>

276. The relevant indicators are:

- a. The jurisdiction(s) of the business' employees benefiting from the service as reported to the cloud computing service provider by the customer; or if unavailable or unreliable
- b. The jurisdiction(s) in which the business has operations, determined by the offices and address details contained in the business agreement and/or in records collected for tax purposes (such as value added tax purposes); or if unavailable or unreliable
- c. Other available information that can be used to determine the jurisdiction of the location of the business' employees that use the service.

### **4.2.3. Consumer-facing businesses**

#### *Revenue from consumer-facing goods sold directly to consumer*

277. The sourcing rule is the jurisdiction of the place of final delivery of the good to the consumer.

278. The relevant indicators are:

- a. The jurisdiction of the retail storefront directly selling to consumers; or if not applicable
- b. The jurisdiction of the final delivery address of the goods to the consumer.

#### *Revenue from consumer-facing goods sold through Independent Distributor*

279. The sourcing rule is the jurisdiction of the place of final delivery of the good to the consumer.

280. The relevant indicators are:

- a. The jurisdiction of the place of final delivery to the consumer as reported by the independent distributor, based on:
  - i. The jurisdiction of the retail storefront directly selling to consumers; or if not applicable
  - ii. The jurisdiction of the final delivery address of the goods; or if unavailable

- b. The jurisdiction of the place of final delivery of the good to the consumer as indicated by other information already available to the MNE.

#### *Revenue from consumer-facing services*

- 281. The sourcing rule is the jurisdiction of the place of enjoyment or use of the service.
- 282. The relevant indicator is:
  - a. The jurisdiction of the address where the service is performed; or
  - b. For services delivered online, the jurisdiction of the ordinary residence of the user, based on:
    - i. The jurisdiction of the ordinary residence of the purchaser based on user profile information:
      - 1. Information on residence obtained from recurring data on geolocation or IP address of the purchaser's device; or if unavailable or unreliable
      - 2. Billing address of the purchaser; or if unavailable or unreliable
      - 3. Mobile country code of the phone number of the purchaser; or if unavailable or unreliable
      - 4. Information on residence inputted by the purchaser; or if unavailable or unreliable
      - 5. Other available information that can be used to determine the jurisdiction of the ordinary residence of the purchaser; or if unavailable or unreliable
    - ii. The jurisdiction of the billing address of the purchaser; or if unavailable or unreliable
    - iii. The jurisdiction of the geolocation of the device of the purchaser; or if unavailable or unreliable
    - iv. The jurisdiction of the IP address of the device of the purchase

#### *Revenue from franchising and licensing*

##### **Consumer-facing goods**

- 283. The sourcing rule for revenue from franchising goods or licensing an intangible that is attached to goods is the jurisdiction of the place of final delivery of the good to the consumer.
- 284. The relevant indicators are:
  - a. The jurisdiction of the place of delivery or enjoyment as reported by the franchisee or licensee, based on:
    - i. The jurisdiction of the retail storefront directly selling to consumers; or if not applicable
    - ii. The jurisdiction of the final delivery address of the goods; or if unavailable
  - b. The jurisdiction of the place of final delivery of the good to the consumer as indicated by other information already available to franchisor / licensor

##### **Consumer-facing services**

- 285. The sourcing rule for revenue from franchising services or licensing an intangible that is used to support the provision of a service to consumers is the jurisdiction of the place of enjoyment or use of the service.

286. The relevant indicators are:
- a. The jurisdiction of the place of delivery or enjoyment of the service as reported by the franchisee or licensee, based on:
    - i. The jurisdiction of the address where the service is performed; or if unavailable
  - b. The jurisdiction of the place of enjoyment or use of the service as indicated by other information already available to franchisor / licensor

#### **4.2.4. Documentation**

287. The MNE must retain documentation explaining:
- a. The functioning of its internal control framework related to revenue sourcing;
  - b. Aggregate and periodic information on results of applying the indicators, for each type of revenue and in each jurisdiction;
  - c. The specific indicator used for a given category of revenue; and
  - d. The circumstances when an indicator lower in the hierarchy was used, including why the indicator higher in the hierarchy was not available (and the steps taken to obtain it) or not reliable (and the information available to confirm the presence of a more reliable indicator).

### **4.3. Commentary on revenue sourcing rules**

288. This section contains the Commentary on the sourcing rules. This provides further context on the relevant business models where this is essential to understand the sourcing rule, and explains the meaning of certain indicators contained in the rules. The Commentary provide guidance on the application of the revenue sourcing rules. This guidance will cover four areas:

- a. Hierarchy of the indicators;
- b. Guidance on ADS (including an explanation of the indicators and guidance on relevant revenues from in-scope activities);
- c. Guidance on revenue from CFB; and
- d. Documentation requirements.

#### **4.3.1. Hierarchy of indicators**

289. The revenue sourcing rules are designed to ensure the collection of the most accurate information possible. This is achieved by providing a hierarchy of rules, which sets a range of acceptable data points for each given scenario. While it may be ideal to have the revenue sourcing rules based on one uniform indicator only (for example, in the case of online advertising, for the sourcing rules to look to the location of the user viewing an online advertisement and the indicator used would be the geolocation), it is recognised that different business models are used even within one set of activities and which make a different set of sourcing rules more accurate, or that different data points may be available for different users / customers even within the same set of activities. At the same time, the hierarchy of indicators approach recognises that MNEs may not always have the same specific data points, given the different commercial operations that drive the collection of information. This means that prescribing a single preferred indicator may be unworkable for certain MNEs, and may overlook other reliable available data that delivers a similar or more reliable outcome.

290. The range of indicators has been proposed as a way to provide a sound basis for revenue sourcing. In most cases, MNEs have a commercial interest in knowing the location of their final sales, for

example to drive efforts at efficient marketing and identify growth opportunities, which provides assurance that they are likely to be in a position to give a relatively high level of confidence that the results will be reliable. However, the range of permitted indicators also recognises that the operation of Amount A will in some cases necessarily result in balancing the interest in accuracy with the need to take a reasonable approach to limit the compliance burdens on MNEs.

291. In this hierarchical structure, the first indicator is generally the preferred indicator and the MNE should source the revenue according to this indicator if possible. However, an MNE may use an alternative indicator that appears next in the hierarchy, if it can demonstrate that the first indicator was not available or if it can justify that the first indicator was unreliable, and so on with the remaining indicators.

292. Information would be considered unavailable if it is not within the MNE's possession, and reasonable steps have been taken to obtain it have been unsuccessful.<sup>5</sup> Only once such steps are taken, and the information is not able to be obtained by the MNE may it move to a secondary indicator.

293. Information would be considered unreliable if the MNE can justify that the indicator is not a true representation of the principle in the source rule. The result from the indicator could not reasonably be correct, for example where a disproportionate amount of indicators point to one small jurisdiction (for example because of a use of a virtual private network (VPN)) or where a delivery address is that of a freight forwarder.<sup>6</sup>

294. Where an MNE derives revenue from more than one type of service or activity, the MNE should use the different sourcing rules per type of revenue. Where an MNE has different data points for each individual customer / user in respect of the same service or activity / revenue stream (e.g. where for some users the user profile data is provided by the customer logging into the service, while for others only the device location information is available), it will need to apply different indicators in respect of the same service, applying the hierarchy for each customer / user. However, a de minimis safe harbour could be explored in this regard where the differences in available data points only applies in respect of a small number of customers / users.

295. Similarly, if a business is within the scope of Amount A under the general principle of ADS, and the category of that business is not explicitly provided for in the revenue sourcing rule, it should apply the sourcing rules for the type of revenue that is most analogous to the revenue that it derives. Further guidance on such cases will be developed as needed over time.

### **4.3.2. Guidance on automated digital services**

296. This section of the Commentary sets out an explanation of the various indicators used in the rules, followed by an explanation of the relevant business models and how the indicators apply.

#### *Guidance on indicators for ADS*

297. The indicators included in the revenue sourcing rules for ADS are explained below.

#### **Geolocation data**

298. Geolocation is based on GPS data or information that could be used to extrapolate a viewer's location from a device. When a user enables location sharing on the device they are using, it is possible for the MNE to determine the precise location of the user. Therefore, when the MNE has geolocation data available, it should always use this as the indicator to identify the real-time location of the user.

299. Broadly, geolocation services use various data points to determine the location of the user. These can include a combination of IP address, GPS-derived location data, cell tower IDs to which the user is connected, as well as data associated with Wi-Fi positioning systems. The use of various data points to

triangulate a user's location results in higher levels of accuracy and is therefore considered the most reliable way to determine a user's location for the purpose of these sourcing rules.

300. For example, a geolocation application programming interface (API) is a feature that is embedded in most modern Internet browsers, which allows websites to request the location of the user in the form of a pop-up window. If the user accepts the prompt, the API locates the user, even if the user is connected to the Internet through a VPN. However, as this feature needs to be enabled on the website or platform the user is connecting to, the data is not always available to MNEs.

301. In the revenue sourcing rules, geolocation may appear both as a standalone indicator and as part of a user profile. When geolocation is included as part of user profile information, it refers to recurring data on a user's location, which can be used to determine the user's ordinary residence. This looks to the data the MNE has available about the repeating, recurring pattern of the user's location over time, and which is therefore a reliable indicator of habitual location. Where such data shows a recurring pattern of location, it can be relied upon, notwithstanding occasional results that evidence a different location (such as where a user travels abroad). If the recurring data evidences one jurisdiction for more than half of a year, this can be treated as reliable.

### **IP address**

302. The Internet Protocol (IP) address (based on Wi-Fi or cellular IP address, depending on how the user is connected to the Internet) can be used to locate the device of the user. It is the number that is assigned to each device connected to a computer network, meaning that every device connected to the Internet has an IP address.

303. Although an IP address does not inherently contain the location of the user, IP address databases are widely used by MNEs to determine the location of the user for business reasons. In such databases, certain ranges of IP addresses are assigned to certain jurisdictions, which allows the MNE to identify the jurisdiction from the IP address. The MNE can use different products or methods to track the IP address, all of which could be used for the purpose of apply the revenue sourcing rules.

304. When the IP address appears as part of user profile information, the same considerations apply as set out in the discussion of geolocation data above for recurring data on IP address.

### **VPN**

305. It is possible for users to elect to change the location associated with their IP address through the use of a VPN, which assigns a new IP address to the user in the country of their choosing (where a VPN server is located) and make it appear as an IP address in this other country. This can be done for privacy or security reasons, for business reasons, or to access specific content available in a given country. For example, a user located in Country X may decide to use a VPN to connect to Country Z, in order to access desired content on a streaming platform. In this case, the location associated with the IP address that the user connected to the streaming platform with would be in Country Z, rather than Country X.

306. The use of the VPN can be more widespread in some jurisdictions than others. In some cases, although far from a standard practice or commercial requirement for all ADS providers, "geoblocking" may occur (e.g. as a way for the MNE to protect and enforce the licensing arrangements it has in place), which means that the digital content available in such a market is limited. To have access to wider content available in other markets, users might be willing to use VPN more frequently. Certain ADS providers take specific steps to limit the access to their service via VPN. This involves testing the IP addresses of users accessing their service against information in databases listing known VPN addresses, and is more common for digital content services. However, it is not entirely accurate given that VPN addresses can change. In any case, attempting to break through a VPN is not technically feasible, and if it were so, it

would contradict the purpose of the service provided, for example, where a commercial feature of cloud computing is to provide security of the computing service.

307. In cases where an MNE has the ability to detect VPN usage by their users, it may still be possible for it to make an assumption of the user's location based on historical IP address data. Users may not use a VPN all the time when accessing a platform. This is most likely due to the disadvantages of VPNs, such as slower connection speed. If the MNE logs IP address data for each connection a user makes, it may be possible for the MNE to make a reasonable assumption as to the ordinary residence of the user, provided the user does not connect to the platform using a VPN at all times.

308. To balance the interest in accuracy with the recognition of the limit to which MNEs can address this issue reliably and efficiently, the revenue sourcing rules use a hierarchy of indicators that decrease the dependence of sourcing rules on IP address as an indicator of the location of the user.

309. In many cases, the commercial interest of the MNE is to have a high degree of accurate information about the user, for example, in order to be able to charge their customers a premium for serving the advertisements precisely to the intended audience. These MNEs should, as part of their business, be relying on more sophisticated information than the IP address, such as a range of user profile details or geolocation information and would be expected to take reasonable steps to obtain this information (as set out in the hierarchy relevant to the type of service).<sup>7</sup>

### **User profile information**

310. MNEs that derive their revenue from the relevant ADS activities often collect personal data on their users, whether through a sign-up process or through remote automated monitoring of the users' activity on the MNE's platform or the Internet (e.g. through cookies).

311. There are two types of user profile information. The first one is created by the MNE, based on information it has available on the user. The second one is created by the user itself. A user profile can include information on the user's historical location at different points in time, their usual residence, demographic characteristics (e.g. age, gender, nationality, or estimated income), as well behavioural characteristics (e.g. purchase history, Internet browsing data, or preferences derived from a user's engagement on an MNE's platform).

312. In order to increase the value of the data, the MNE may create user profiles, which can then be used in targeting the MNE's online advertising, or to create data sets that are then monetised with third parties by way of a sale or licensing user profile information. The information contained in a user profile will depend on the information an MNE collects during each user's sign-up process and on the collection of data on the user's interaction with the MNE's platform or service. Some MNEs may for commercial reasons refrain from over-burdening the sign-up process so as to make customer on-boarding as easy as possible (e.g. digital content streaming), while others will obtain a lot of data as part of the nature of the service (e.g. social media).

313. The MNE can also use the user profile information from the profile that was created by the user itself (e.g. for creating a profile on a social media platform). Information that can be included in this profile, in addition to the profile created by the MNE itself, can be home address, telephone number (for which the MNE can use the country code as an indicator of the user's location) and the location of the bank used for the payment, to locate the jurisdiction.

314. In the revenue sourcing rules, several indicators are listed under user profile information. These indicators refer to information that is contained within a user profile that is available to the MNE. When using user profile information for revenue sourcing, the MNE will first look to the indicators explicitly listed to determine a user's ordinary residence, as set out in the hierarchy in the rules above, which prioritise user profile information created by the MNE. In cases where the MNE does not have information on the listed indicators available, or the indicators are unreliable, it may use "other available information"

contained within the user profile, which can be used to determine the ordinary residence of the user. This recognises the fact that MNEs operating under different business models are collecting different data points on their users and gives the MNE the flexibility to use another indicator contained within the specific framework of the user profile information it collects. The MNE will be required to sufficiently document its choice of indicator and demonstrate that its results are consistent with the relevant sourcing rule.

315. Furthermore, it is possible for certain indicators to appear more than once in the revenue sourcing rules. For example, the billing address can appear both as an indicator contained within user profile information and as a standalone indicator. This recognises that certain ADS business models may not be collecting user profile information at all, but may only keep data points related to specific transactions. Therefore, although an MNE may not have the billing address available as part of a more comprehensive user profile, it still may have billing addresses linked to individual transactions, which can be used for the purpose of revenue sourcing.

### **Billing address**

316. The billing address may identify where the purchaser usually resides. Its purpose is to pinpoint where the customer is established, has a permanent address or usually resides.

317. It is possible that the MNE will not have the billing information of the customer because the payment service is operated by a third party (e.g. PayPal or the App store). The MNE should take reasonable steps to obtain information from the payment service provider on the jurisdiction of billing address of the customer (e.g. on an aggregated level, without disclosing any personal information on the underlying customer). This may be feasible, for example, as payment service providers may provide a report to reconcile the payments it has collected on behalf of the MNE. Further information may therefore already be available or relatively easy to add. In addition, some MNEs are already obtaining this information for VAT purposes.

318. It is acknowledged that users can move jurisdictions and continue to pay for the service with a bank account that is tied to the former residence address. Because a customer cannot generally open a bank account without proof of address, the use of billing address will not be wholly unconnected from the person. However, if the MNE has reasons to believe that the billing address is unreliable, it should use the next indicator in the hierarchy of indicators.

319. See the previous section above for an explanation of when a billing address may appear in the revenue sourcing rules under both user profile and as a standalone indicator.

### **Other**

320. The use of “other available information” as the indicator for revenue sourcing is generally applicable for cases where the sourcing rule looks to the real-time location of users. This indicator can only be used in a last resort situation where the MNE could not obtain any other information included in the hierarchy of indicators, which would lead to a result consistent with the sourcing rule. In such cases, the MNE should adequately document the reasons why other indicators were not available, to justify its use of this indicator.

321. A similar approach is taken with respect to “other available information” contained within user profile information.

### *Guidance on revenues from relevant in-scope ADS activities*

322. This section explains the relevant business models and the rationale for the sourcing rule, together with guidance on applying the associated indicators.

## Revenue from online advertising services

323. Revenue from online advertising services generally comes from fees paid by advertisers. However, the advertisements are directed to viewers, and often targeted using information about viewers collected through such means as online search engines, social media platforms and online intermediation platforms, but also through apps, online games, news websites and blogs and Internet of things devices. The advertising can either be offered as part of an MNE's service offering, or facilitated by third parties, such as through the process of real-time bidding. This category includes all online advertising, through all possible online platforms and services facilitating online advertising.

324. The revenue potential of the advertisement is connected to whether it attracts the attention of the viewer, especially if it is tailored to that viewer. The advertisement can either be viewed or clicked on, and as such, the MNE can earn revenue based on the views, the clicks, or a combination of the both. Regardless of how the advertisement is being "used", the sourcing rule is based on the "eyeballs", meaning that it identifies the location of the viewer of the advertisement, rather than the location of the company that is paying the fee for the advertisement. The MNE will need to monitor the extent to which the advertising has been shown, in order to report back to their customer on how the advertising budget has been spent, and as such it would have access to a range of information in order to do this.

325. The hierarchy of indicators for revenue from online advertising services is based on the use of the most reliable information to determine the location of the user that is viewing the advertisement, in the context of that MNE's business model. As MNEs make use of different information, or a combination of these, for providing online advertising services, the indicators selected by the MNE for the purpose of revenue sourcing can vary depending on the way the MNE targets its advertisement.

326. Where the targeting of an advertisement is linked to the real-time location of the viewer (e.g. when a local restaurant is targeting all users within a one kilometre radius, or when an advertisement is not targeted), the MNE will apply the sourcing rule that looks to the real-time location of the viewer at the time they view the advertisement.

327. Geolocation data is considered the most reliable indicator for the real-time location of the user and is not ordinarily changed in the way that an IP address is through the use of a VPN.<sup>8</sup> However, users may choose to disable geolocation services on their device, and this indicator may not always be available to the MNE. If the information required to use this indicator is not available, the MNE will use the IP address to determine the user's location.

328. The rule for location-based advertising is also used for advertising that is generic and is not targeted based on any parameters relating to specific location or user profiles. In this case, the indicators relating to the geolocation or IP address at the time of viewing the advertisement will be the most accurate and available information.<sup>9</sup>

329. Where the content of the advertisement is directed to viewers based on anything other than the real-time location of the viewer, an MNE generally makes use of a broad set of information that may be contained in a user's profile information in order to serve the advertisement to the users that a customer wants to reach. This indicator is the starting point for the purpose of revenue sourcing for MNEs involved in online advertising and will be most relevant for advertisements that target users based on their usual residence, demographic and behavioural characteristics, or a combination thereof. In cases of last resort, if the MNE does not have this information available, or if the indicators derived from user profile information are unreliable, it may use geolocation or IP address to determine the real-time location of the viewer instead. In such cases, the MNE should adequately document the reasons why other indicators were not available, to justify its use of these indicators.

330. When the MNE uses a combination of information derived from a user profile and information on the real-time location of the user, the MNE should apply the sourcing rule that reflects the type of information which is in general more important for the type of advertising in question. On the other hand,

when the MNE has, for example, one category of advertisements based on geolocation data and another based on other factors, different sourcing rules should generally be employed for each.

331. Furthermore, it is recognised that an MNE involved in the provision of online advertising by way of real time bidding may be in scope as both an online advertising service and a service transmitting data about users. In order to ensure certainty in the application of revenue sourcing rules, the sourcing rules for online advertising and services transmitting data about users are aligned, so that an MNE that finds itself in scope under both categories will use the same hierarchy of sourcing indicators under Amount A.

#### **Revenue from sale or other alienation of user data**

332. As more personal data has become available online, such as through the use of social media or through Internet connected devices, MNEs can be in the business of acquiring and monetising that personal data. This is commonly used for sale to a company or campaign that can then target its advertising to the most relevant users. As outlined in the guidance on online advertising, these companies are generally creating an “advertising profile” to facilitate targeted advertising. This profile contains a set of data, which contains pieces of information about users personal attributes (such as age, gender, hobbies, place of residence, marital status, income level), or pieces of information about features of a consumer’s device (such as operating system, brand, model, installed software, and device’s localisation data).

333. The sourcing rule is based on the information on either the ordinary residence or the real-time location of the users that are the subject of the data being transmitted. This recognises that the value of the data is derived from the information that is contained within the dataset, which could vary depending on what data points are being collected.

334. Therefore, if the data that is being transmitted is about the personal attributes of a user, the ordinary residence of the user is the most relevant sourcing rule, as this will reflect the contribution of that whole person’s profile and behaviour, which has been built over time primarily in the residence location. Conversely, if the data that is being transmitted is only about the real-time location of the user at the point of data collection (rather than a more comprehensive user profile), the more relevant sourcing rule will be based on the real-time location of the user at the point of data collection.

335. In cases where the data that is being transmitted reflects a dataset that is primarily about the real-time location of the user, the MNE will use information on the geolocation of the user at the point of collection of the data. To do this, the MNE will prioritise the use of GPS, or other geolocation data available, to determine the location of the user at the point of data collection. If this information is unavailable, the MNE will use the IP address of the user’s device to determine the jurisdiction, where the user is located at the point of data collection.

336. When the data in question is based on anything other than the real-time location of the user, the sourcing rule is the jurisdiction of the ordinary residence of the user. The primary sourcing indicator is user profile information, as the revenue from transmitting the data is related to the user’s personal attributes and characteristics. The indicators are obtained from the data that is being transmitted, or from any other information the MNE may have on the user that is subject to the data transmitted.

#### **Revenue from online search engines**

337. Online search engines are websites that allow users to locate information on the Internet. The search service is free of charge to the user, but there are generally two ways that the provider monetises the service.

338. One is by selling advertising space and promoting certain websites on the search engine. For this type of revenue, the sourcing rules for revenue from online advertising services apply.

339. The second type is collection of data about the users of the search engine, which the provider can sell to advertisers. For this type of revenue, the sourcing rule for online search engines is the same as for revenue from the sale or other alienation of user data.

#### **Revenue from social media platforms**

340. This refers to platforms that promote interaction between users. The service is often free of charge to the user, and the revenue is derived from the sale of advertising or the sale of data about the users. As for online search engines, the revenue sourcing rule follows that for revenue from online advertising services or revenue from the sale or other alienation of user data, as applicable.

341. If the service is provided to the user by way of subscription fees, the revenue sourcing rule follows that for revenue from digital content services.

#### **Revenue from online intermediation platforms**

342. Broadly, there are three revenue streams for Online Intermediation Platforms Services: (i) Online Advertising; (ii) Sale or Other Alienation of User Data; and (iii) commission / fees for intermediation services. The revenue sourcing rules follow the type of revenue generated. In respect of advertising, the online advertising services rule would apply, as above. For the sale or other alienation of user data, the respective revenue sourcing rules as described above apply. Commission / fees for intermediation services can be, e.g. a portion of the sales price paid by the purchaser, or a fee charged to the seller for a portion of their sales on the site.<sup>10</sup>

343. For the revenue derived from commission / fees, the sourcing rule is a 50:50 split between the seller and the purchaser. This recognises that both the market and the provider of the goods have contributed to the possibility of the platform to generate its revenue. It is also more neutral as between different jurisdictions where a transaction is cross-border, as well as between business models that are essentially similar in substance but may as a matter of form charge differently for similar transactions.

344. The sourcing rule with respect to the purchaser depends on the type of good / service being purchased.

345. For “tangible” goods, the sourcing rule is the ordinary residence of the purchaser, as this is the person that has developed the interest and ability to make the purchase. The indicators look first to the billing address, delivery address, and user profile as likely indicators of the ordinary residence, as these features have some degree of permanence of the connection of the purchaser to the jurisdiction. If this information is not available, then geolocation or IP address is used, which will identify the location of the user at the point of sale. This may often, but not always, correlate to the usual residence, depending for example on how much the purchaser uses the service while travelling abroad.

346. For “tangible” services (such as hotel bookings or other short term location rentals, taxi rides, storage services, food delivery etc.), the sourcing rule is the real-time location of the purchaser at the time of purchase, as these services are generally for one-time use (unlike intangible services below), and this sourcing principle reflects the environment of the market jurisdiction where the purchaser has made the decision to purchase the service. The indicators look first to the geolocation of the purchaser, delivery address of the purchaser (if applicable, for services such as food delivery), and the IP address of the purchaser’s device, as these features reflect the jurisdiction of the location of the purchaser at the time of making the purchase. If this information is not available, then user profile information is used, which will identify the location where the user typically uses the service, which may often, but not always, correlate to the real-time location of the user at the point of sale. Although the sourcing principle is the same as for location based advertising and sale of user data, additional indicators are included in this rule, given that an online intermediation platform may have additional information given their role in intermediating transactions.

347. For intangible goods / services (such as the sale of an app, software or a movie through an online intermediation platform), the sourcing rule also looks to the ordinary residence of the purchaser. Intangibles are generally used over a period of time rather than be for one-time use at the location when the purchase is made, and the ordinary residence of the purchaser is most relevant. This is also consistent with the sourcing rule for other intangibles such as digital content services and cloud computing services. The indicators used are the same as for digital content services.

348. The sourcing rule with respect to the seller also depends on the type of good/service being delivered.

349. For tangible goods, the sourcing rule is the ordinary residence of the seller that is the contracting party to the sale. The residence of the seller is indicated by the business address (or, in cases where the seller is a natural person acting in a private capacity, the indicator used is the residential address of the seller). If this information is unavailable or unreliable, the indicator is based on user profile information.

350. For tangible services, the sourcing rule is the location where the service is performed. This is because the relevant contributing market jurisdiction is the place where the purchaser has sought to make use of the service, and not where the owner or provider of the service is themselves located. This means that, for example, if an owner of a property is resident in Jurisdiction R, and the property is located in Jurisdiction P, and the property is rented out to a user of the platform, the appropriate sourcing jurisdiction is Jurisdiction P. Further guidance will be provided in cases where the service is performed in more than one jurisdiction, such as airline transportation or a travel package involving tourism in multiple destinations.

351. For intangible goods / services, the sourcing rule is the residence of the seller. This is an equivalent rule to tangible goods. The residence of the seller is indicated by the business address (or in cases where the seller is a natural person, the indicator used is the residential address of the seller). If this information is unavailable or unreliable, the indicator is based on user profile information.

### **Revenue from digital content services**

352. Digital content services, such as the online access to films, music and software through streaming or downloading, generally generate income by either charging a fee to users or by making the service free to users but generating income for displaying advertising during use of the service and / or selling data about users of the service. In the two latter cases, the revenue sourcing rules for revenue from online advertising or revenue from sale or other alienation of user data would apply.

353. Fee-based Digital Content Services are those where a fee is paid by the user to access services such as online gaming, certain social media platforms or any other type of online subscriptions such as databases. It also includes the sale of software such as mobile applications, computer programmes or games that are in scope of ADS.

354. Furthermore, this category includes revenue from other online purchases that the customer makes when using a service, and has options to make additional features available for a fee. For example, a customer may do this to access particular premium content or when it purchases additional options (for example more expensive articles on top of the monthly subscription).

355. The sourcing rule for Digital Content Services is the place where the customer is ordinarily resident. This is because the person has a direct customer relationship with the service provider as it pays the subscription fee or other purchase to access the content, and so it is the connection to the customer's daily life that represents the value in the market. Although the customer can enjoy the content in multiple locations (e.g. watching or listening while abroad) and one account can be used by multiple users and/or on multiple devices, in most instances the place of residence of the customer and the place of enjoyment will be the same in any case. Further sourcing to every location that every user accessed the service would also entail additional compliance burdens.

356. The indicators look first to the user profile and billing address as likely indicators of the usual residence, as these features have some degree of permanence of the connection of the purchaser to the jurisdiction. If this information is not available, or is otherwise unreliable, the geolocation of the device or IP address is used, which will identify the location of the user at the point of sale. This may often, but not always, correlate to the usual residence, depending for example on how much the purchaser uses the service while travelling abroad.

#### **Revenue from online gaming services**

357. Online Gaming Services allow users to interact with one another in the game being played. Broadly, there are three revenue streams relevant to online gaming.

358. One is where the access to the game is free, but there will be advertising within the game. The sourcing rules for revenue from Online Advertising Services applies this model.

359. The second is collection of data about the users of the online game, which the provider can sell to advertisers. For this type of revenue, the sourcing rule is the same as for revenue from Sale or Other Alienation of User Data.

360. The third model is similar to Digital Content Services, where a player will register for a subscription and pay a fee to access the game. In addition, once the player is playing the game, there may be options to purchase additional features (“micro-transactions” such as access to new game levels, or game accessories). The sourcing rule for revenue from Digital Content Services applies to this model.

#### **Revenue from standardised online teaching services**

361. Online teaching services that fall within the definition of ADS make available standardised educational material to a large number of potential users. Broadly, there are three revenue streams relevant to online teaching services.

362. One is where the access to the teaching material is free, but there will be advertising within the material. The sourcing rule for revenue from Online Advertising Services Applies for this model.

363. The second is collection of data about the users of the service, which the provider can sell to advertisers or other third parties. For this type of revenue, the sourcing rule is the same as for revenue from Sale or Other Alienation of User Data.

364. The third model is similar to Digital Content Services, where a user will pay to access the service. The sourcing rule for revenue from Digital Content Services applies to this model.

#### **Revenue from cloud computing services**

365. Cloud computing is unlike other ADS above, because it is of most relevance to other businesses, although these services can be directed to individual consumers (e.g. for storing personal files). Examples of Cloud Computing Services include providing document management and storage services for a large professional services firm, providing computing power to other businesses, hosting the website through which another ADS provider delivers its services to users, and providing the software for data from highly technical operating machinery such as aeroplanes to be fed into a central base for analysis and monitoring. Cloud computing service providers can also derive revenues from advertising; in this case, the sourcing rule for revenue from online advertising services applies.

366. When the service is sold directly to individual users (such as personal data storage), the sourcing rule is the location of the purchaser. The cloud computing service provider has a more direct relationship with the user, and should be able to identify the ordinary residence of the purchaser, using user profile information or the billing address. If this information is unavailable or unreliable, the service provider may

use geolocation or IP address of the device on which the cloud computing service is being used, to identify the real-time location of the user at the time of purchase of the service.

367. In respect of Cloud Computing Services designed for internal use by a business customer and its employees only, there are difficulties in identifying the end-users of the service with precision. For example, the client businesses may procure their cloud computing service through one entity, and the service can then be configured for use by any number of employees throughout the world in conjunction with the business' internal IT system, and the access to the service may be through a central VPN. The sourcing rule is the location where the business customer uses the service. The hierarchy of indicators looks first to information reported by the customer, as this is likely to be the most reliable, and the most efficient, way of obtaining this information.

368. Alternatively, the cloud computing service provider is required to identify the jurisdiction where the business has operations, using information available from its business agreement with the customer and any records collected for tax purposes to determine the jurisdiction(s). Where the customer has operations in more than one jurisdiction, the MNE must make a fair and reasonable apportionment between those jurisdictions, for example, based on information on relative size of the operations. If this is not practical to do, an equal apportionment between each jurisdiction can be used.

369. If this information is not reasonably available, then the service provider can use other location information that can be used to locate the end-users of the cloud service, namely the business' employees that use the service.

### **4.3.3. Guidance on consumer-facing business**

370. This section of the Commentary provides a summary of the sourcing rules for CFB and sets out how the indicators apply.

#### *Revenue from consumer-facing goods sold directly to consumers*

371. Consumer-facing goods are usually finished goods, but can also include component parts, if sold directly by the MNE to the end-customer (e.g. replacement parts). In many cases, tangible goods are made available to a customer directly through a retail store or by shipping directly to the customer. Consumer-facing goods can be made available directly at a storefront or can be purchased online and delivered to the customer's delivery address. The sourcing rule is the place of final delivery to the customer.

372. The indicators apply to two different circumstances. The first one is where the MNE sells through its own retail store, in which case the final delivery is the location of the storefront (being the location of the customer's interaction with the MNE). The second one is where it delivers directly to the customer (e.g. through an online shop), in which case the final delivery is the location of the customer's shipping address. Given the direct relationship of the seller with the customer, the sourcing can be identified with relative ease and no hierarchy of indicators is needed. This approach applies notwithstanding that different entities in the MNE may be involved. As it is between the same MNE, the sourcing rules expect that the MNE will have information on the final delivery even if performed by another group member.

373. Where a consumer purchases a good from a physical retail store, and asks the seller to ship it to a delivery address in a different jurisdiction, the revenue sourcing rule to be applied is the jurisdiction of the retail store.

#### *Revenue from consumer-facing goods sold through independent distributor*

374. There are circumstances where the MNE sells and delivers tangible goods using an unrelated intermediary, such as through a distribution arrangement. This can arise in respect of ordinary consumer

goods that are in scope but are sold through a distribution arrangement or by another business (e.g. shoes sold by a distributor or shoes sold to a large retail chain that sells to customers).

375. Where a third party distributor is used, it may resell the goods to consumers (directly or indirectly) located within the same jurisdiction. This may be the case for commercial reasons, such as where the MNE has selected a distributor that is close to the final destination to reduce shipping costs (particularly for perishable goods), or where a distributor is given the right to sell the goods only within a specific country.

376. However, in some cases a regional third party distributor may be established in one central location and be responsible (direct or indirectly) for distribution within a certain geographic region (e.g. for Europe, for the Asia Pacific region). Distribution arrangements are also in place where one MNE enters an agreement for another to sell its products, for example, beverages being sold by another MNE restaurant chain.

377. As for the previous category revenue from consumer-facing goods sold directly to consumers, the sourcing rule is the place of final delivery of the good to the consumer. In principle, accuracy of identifying the market jurisdiction should be sought, to align the results where the MNE is itself fully responsible for the complete value chain of the good, or in the case that the distribution of the goods is contracted with third party (independent) distributors.

378. The hierarchy of the indicators looks first to the information reported by the distributor as the most reliable and accurate indicator. In some cases, the MNE would already have this information available, for example because of regulatory requirements or for safety reasons, or for commercial interest in knowing the performance of its product in each market. In other cases, the MNE is expected to take reasonable steps to seek a change in the contractual arrangement with the distributor, which would require the distributor to report the information on the aggregate number and type of products sold to each jurisdiction (no sensitive commercial information such as pricing information or specific customer addresses would be required). It is noted that such arrangements may take time to negotiate, and may come at a cost as a broader renegotiation of the contract.<sup>11</sup>

379. Only if the MNE can demonstrate that it has taken reasonable steps to change the contract to obtain the information directly from the independent distributor, but has been unsuccessful in doing so, the MNE would use information that is already available, such as market research for the purpose of management reporting.<sup>12</sup> The same approach would apply where a contract has been amended, but there is a period of time before it becomes operational.

### *Revenue from consumer-facing services*

380. The relevant sourcing rule for consumer-facing services is the place of enjoyment or use of the service. This is because these types of services are generally consumed at the same time as and at the same place where they are physically performed, and the place that the consumer has sought the performance to take place represents the most accurate market jurisdiction. For example, in the case of tourism, it is the benefits offered by the jurisdiction being visited, rather than the residence of the tourist, that justifies a return to the market jurisdiction.

381. The indicator for the place that the service is enjoyed or used is the address where the service is performed. In most cases this will be straightforward, such as the location of the hotel, the location of the tourist site, or the performance of the entertainment, as this will be a key term identified in the service agreement. As such, the sourcing can be identified with relative ease and no other indicators are needed.

382. In respect of consumer-facing services delivered online, the place of enjoyment is the ordinary residence of the consumer. The indicators are the same as for digital content services.

### *Revenue from franchising and licensing*

383. Licensing and franchising arrangements cover situations where the provider of a consumer-facing good or intangible makes their product available through an unrelated third party that has the relationship with the customer. For example, a business licenses the global distribution rights for a portfolio of films to a third party distributor, which subsequently sub-licenses these films to its customers around the world. A similar example is a film or television content owner that licenses its content to a digital content service. Another example is franchising the rights to open a fast food restaurant to a regional franchisee, who in turn agrees the specific local restaurant sites. A fourth example is where an MNE enters an arrangement for its logo to be attached to clothing and sold by a large MNE retailer.

384. The underlying supply will typically be used or consumed in the jurisdiction where the customers of the licensee / franchisee are located, which may be separate from where the licensor / franchisor is located. The licence / franchise payments will be made to the licensor / franchisor and represents a return from the market jurisdiction.

385. The sourcing principle for franchising a business selling consumer-facing goods or licensing an intangible that is attached to consumer-facing goods is similar to the ordinary sourcing rule for consumer-facing goods, which is the place of delivery of the good. The sourcing rule for franchising a business selling consumer-facing services or licensing an intangible that is enjoyed as a service is similar to the ordinary sourcing rule of consumer-facing services, which is place of performance of the service. In principle, accuracy of identifying the market jurisdiction should be sought, to align the results where the MNE is in itself fully responsible for the complete value chain of the good or service, or in the case that the distribution of the goods is contracted with third party unrelated licensees / franchisees.

386. The most accurate indicator is therefore the information reported by the franchisee or licensee, for example as part of the franchising / licensing contract. Under existing contracts, many franchisors / licensors will have information about the location of final customers of their franchisees, such as where agreements contain territorial clauses that only permit the franchisee to sell in a designated area. In other cases, the MNE is expected to take reasonable steps to seek to change the contractual arrangement with the licensee / franchisee, and require them to report the information on the aggregate number and type of products sold / services delivered to each jurisdiction (no sensitive commercial information such as pricing information or specific customer addresses would be required). It is expected that most franchisors / licensors have the right to request this information.<sup>13</sup>

387. It is recognised that there could be an unrelated party involved in the value chain, and therefore a hierarchy applies to the indicators to provide sufficient flexibility. Only if the MNE can demonstrate that it has taken reasonable steps to change the contract to obtain the information directly from the franchisee / licensee, but has been unsuccessful in doing so, the franchisor / licensor would need to provide an approximation based on available information. This could include information collected for internal management reporting, market research, or quality control purposes to comply with local legal requirements (such as censorship or food safety standards). This information could also include information on the location where the franchisee / licensee is performing its operations, under the franchising / licensing agreement. It is expected that the franchisor / licensor have this information already available, or have the right to request this information. The same approach would apply where a contract has been amended, but there is a period of time before it becomes operational.

#### **4.3.4. Documentation**

##### *Type of information*

388. The MNE must retain documentation evidencing:

- The functioning of its internal control framework related to revenue sourcing;

- Aggregate and periodic information on results of applying the indicators, for each type of revenue and in each jurisdiction;
- The specific indicator used for a given category of revenue; and
- The circumstances when an indicator lower in the hierarchy was used, including why the indicator higher in the hierarchy was not available (and the steps taken to obtain it) or not reliable (and the information available to confirm the presence of a more reliable indicator).

389. This information is all systemic level data. For several reasons, including global privacy rules and administration limitations (considering the significant volume of this information), the MNE should not be expected to keep a record of all data points on the above indicators for every transaction or use of the service. In most cases, data will not be able to be stored long enough for the tax administrations to perform a detailed tax audit.

390. Therefore, it is proposed that the MNE need not keep a record of all individual user's geolocation information, IP addresses, and other information, provided that it has a robust internal control framework on which the tax authorities can rely. As such, the MNE should document these internal controls, as well as keep a record of underlying indicators as set out below.

391. The system should be able to extract the aggregate information about the location – at a jurisdictional level – included in the several sources of information.

392. The hierarchy of rules takes into account that information on the preferred indicator may be unavailable or unreliable. There are several reasons for this, as explained in the guidance above. In addition, the indicators can also be different per type of revenue stream, or even in segments of the same revenue stream, for example where different online advertising businesses will have different approaches to tracking users and maintaining their profiles. It also takes into account that business models may change.

393. If the MNE uses a different indicator than the preferred indicator, it should provide the tax administrations with additional information explaining and supporting why it used another indicator. If the reason for using another indicator lower in the hierarchy is that an indicator was unavailable, the documentation should include an explanation of steps taken to obtain the information and why it was unsuccessful. If the reason for using another indicator lower in the hierarchy is that a primary indicator was unreliable, the other indicators that were available and corroborate the application of the secondary indicator as being reliable should be documented.

#### *Review by tax administrations*

394. A separate review of an MNE's revenue sourcing by potentially in excess of 100 jurisdictions where it has operations is impractical and could result in disputes if different conclusions are reached by different tax administrations. As such, Chapter 9 describes a multilateral tax certainty process for Amount A, based on a substantive review of an MNE's self-assessment of Amount A by a review panel of representative tax administrations, which could include a review of relevant aspects of the group's tax control framework. While voluntary on the part of MNEs, it is expected that in the first year(s) of applying Amount A, many of the MNEs within scope of Amount A will seek to make use of this process. Where an MNE does not make a request for multilateral certainty and seeks to rely on domestic remedies, the references below to how a panel may gain comfort would apply equally to the separate reviews conducted unilaterally by tax administrations.

395. The review panel would have different options to perform a compliance review procedure. With respect to giving certainty with respect to the application of revenue sourcing rules, and in light of the above documentation requirements and limitations, it is likely that tax administrations on the review panel would generally look to the quality control systems in place to apply the revenue sourcing rules in an accurate way, rather than generally carrying out an audit of every particular transaction.

396. As a starting point, the overall compliance approach taken by the MNE could be part of the process, whereby the review panel would provide the MNE with certainty on the operation of its internal control framework for which it can then rely on the data being extracted by the system. Whenever substantial changes are made to the MNE's control framework, a review by the panel may take place again.

397. Additionally, or as part of this process, the review panel could perform an (IT) audit on the MNE's internal control framework. This may need to be done on behalf of the review panel by the tax administration in the jurisdiction of the UPE, or jurisdiction of other member(s) of the MNE which has the relevant data in its possession and has responsibility for the compliance process and whose systems would be audited, and outcomes of this audit would be subject to review and agreement by the panel.

398. In their review, the review panel could additionally make use of sampling, whereby the auditor would only test a sample of the detailed data that was collected most recently and has therefore been stored for a limited period, in order to evaluate whether the MNE collected this data in an accurate way.

399. The domestic law issues, costs and benefits, efficiency and other relevant aspects of these approaches will be considered further.

#### *Retention of documentation*

400. The MNE is not obliged to keep the underlying data stored. It should however keep the extracted reports in its administration for the period consistent with the requirements of domestic law of the respective jurisdictions. It must be available to the tax administrations upon request. There must be a sufficient sample of the underlying data available to tax administrations in order to be able to justify that the internal control framework is operating in a robust manner.

## 4.4. Next steps

401. The proposals above will be subject to further discussion and refinement, within the broader context of the pending discussions on scope, including further review of the proposed order of the indicators within each hierarchy, taking into account input on the compliance challenges for the affected businesses, and whether more specific indicators are required in respect of business customers. Specific open issues include sourcing the commission / fees from online intermediation platforms in respect of tangible services and the revenue sourcing rules for cloud computing.

402. In addition, further work will be undertaken to finalise guidance on the extent of the "reasonable steps" that are required to obtain information before it can be considered "unavailable." This will need to provide objective guidelines in order to prevent disputes and could involve safe harbours. This could include, for example, asking the holder of the information (such as the customer or distributor), but would not be expected to include a requirement to incur more than insignificant costs (such as a not insignificant increase in price as part of a renegotiation of a contract). In particular, some jurisdictions remain concerned about the accuracy of information when an independent distributor is used, such as where multiple independent distributors are used and the distributor with a contract with the MNE may not have data on the ultimate delivery of the goods. Consideration is being given to the extent of steps that should be expected of an MNE to amend the contract with such intermediary to obtain information on the final destination of goods, and whether this creates undue burdens or any commercial competitive issues for either the MNE whose goods are being sold or the distributor.

403. Likewise, further work will be undertaken to finalise guidance on when an MNE can justify that an indicator is "unreliable." As for the guidance mentioned above, this will likewise need to provide objective guidelines in order to prevent disputes. This could include, for example, more specific guidance in connection with the use of VPNs (such as where this can be detected and is above a certain threshold),

situations where a delivery address should be considered unreliable (such as the address of a freight forwarder and possibly situations where a post office box is used) and whether safe harbours could be used (such as where an MNE has in its possession two or more additional data points that confirm the jurisdiction of the first indicator). The use of safe harbours could be a particularly important way of reducing the potential for disputes, such as relating to whether information was available or unreliable.

404. In addition, more detailed guidance will be developed on the documentation requirements and the definition of “robust internal control framework”, including taking into account the need to ensure privacy of users. In addition, consideration will be given to the action that a tax administration should take in the event of an MNE lacking the requisite internal control framework and documentation.

405. Finally, as the work on the in-scope activity progresses, the revenue sourcing rules will be further developed accordingly. For example, how to determine the categorisation of a service is a “dual category / bundled package” of multiple services or as a service and a good and the implications for revenue sourcing, and to provide revenue sourcing rules for any new categories of ADS added to the positive list.

## Notes

<sup>1</sup> See Commentary in section 4.3, and the discussion on user profile and billing address, for explanation of the difference between billing address as a standalone indicator and billing address as part of user profile information.

<sup>2</sup> Consideration is being given to address a proposal raised by some delegates of the Inclusive Framework to source the revenue for such intermediation wholly to the jurisdiction of performance of the service.

<sup>3</sup> The applicability of this indicator for cases where the purchaser is a business requires further consideration.

<sup>4</sup> Consideration is also being given to whether a more specific rule could be created where cloud computing service is provided to host the platform of another ADS provider. Where such provider will be required to collect information on revenue sourcing to comply with their own obligations under Amount A, more precise information will already be available for this purpose. Such a rule would source the revenue to the location of the end users of the ADS platform, given that although they are not the internal personnel directly using the cloud computing service, they do enjoy a direct benefit from the cloud service, such as faster and higher quality access to the service provided by the platform.

<sup>5</sup> See section 4.4 on “next steps.”

<sup>6</sup> See section 4.4 on “next steps.”

<sup>7</sup> See section 4.4 on “next steps” for further consideration of when the prevalence of VPNs would make an indicator unreliable.

<sup>8</sup> It is possible to use GPS spoofing software, which sets up a fake GPS location for the user. Much like with the VPN, users would appear to be in the location of their choosing, when using this software. However, unlike with the VPN, which can be used to access content in other jurisdictions, GPS spoofing is used solely as a privacy tool and its use does not seem to be as widespread as the use of a VPN.

<sup>9</sup> Further consideration will be given to how the revenue sourcing rules apply for cases of generic advertising where the online advertising MNE may not be charging on a view or click basis but on a fixed fee basis, and whether such MNE may not have the relevant data on the viewers.

<sup>10</sup> Further consideration will be given to the types of fees that may be charged for online intermediation services, such as those that are not tied to transactions, and whether these should fall under the 50/50 revenue rule or be sourced, e.g. as per the rule that applies for digital content services.

<sup>11</sup> See section 4.4 on “next steps” for further work.

<sup>12</sup> Given the proposed approach to nexus for CFB, sales that are below an agreed nexus amount could then also be excluded from the need to determine source. This would be the case where an MNE had information on the jurisdictions of final delivery covering all but a small amount of sales revenue, and that remaining amount was below the nexus threshold. For such cases, this would in practice leave very few situations where sourcing of consumer-facing goods would be based on an approximation.

<sup>13</sup> See section 4.4 on “next steps”.



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