

*To: Tax Treaties, Transfer Pricing and Financial Transactions Division OECD/CTPA
OECD-consultation on Pillar One – Amount A: Regulated Financial Services Exclusion*

The scope of Financial Services Exclusion should be broadened

Dear recipient,

Finance Finland (FFI) supports the exclusion of financial institutions from the scope of Pillar I Amount A -rules.

FFI is worried that the scope of the exclusion does not reflect enough on both national or organizational differences of financial institutions. **For this reason FFI proposes that the scope should be broadened and certain criteria should be removed. Furthermore, certain requirements make the application of the exclusion too random and should be removed.**

In this letter we will provide more detailed comments on how the exclusion should be modified.

1 On certain threshold-requirements

In order to fulfil the the criteria of being an excluded financial entity, all definitions of excluded financial entities have similar requirements on meeting a separate threshold: E.g a depository institution needs to meet a threshold of 20% of its liabilities consisting of deposits, or a mortgage institution needs to meet a threshold of 75 % of its gross income attributable to granting of credits.

The thresholds can be considered artificial in nature and it can actually be quite random what institutions actually fulfil the threshold requirements. This can lead to unexpected outcomes. Furthermore, it can actually vary annually whether an institution fulfils this kind of requirement. **For this reason, FFI requests that such threshold requirements should be removed. It should be enough that the financial institutions in question are licensed to carry said business under the legislation of the jurisdiction. This would make the application of the exclusion more consistent and predictable.**

2 Broader scope on financial institutions is needed

At the moment the financial institutions covered by the exclusion are very limited with many institutions remaining outside of the definitions. E.g, the definitions (such as mortgage institution) do not cover e.g. institutions providing corporate lending. The scope should be changed in order to directly cover more financial institutions such as institutions providing corporate lending and fund managers.

There can be national differences on how the financial institutions operate and these differences may affect on whether the exclusion applies. As an example of a potential way of approaching the definitions in a way that takes into account more national differences, in the EU, the Anti- Tax Avoidance Directive (ATAD) has an exemption that focuses on certain financial institutions being exempt from e.g. interest deduction limitations by how the institutions are defined in the relevant

legislation that governs them (from which also follows e.g. certain requirements on how they are licensed and so on). ATAD does not contain additional criteria on how e.g. gross income of the institutions is formed and the definition of a financial institution is broader:

From ATAD:

'financial undertaking' means any of the following entities:

- (a) *a credit institution or an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council ⁽⁵⁾ or an alternative investment fund manager (AIFM) as defined in point (b) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council ⁽⁶⁾ or an undertaking for collective investment in transferable securities (UCITS) management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC of the European Parliament and of the Council ⁽⁷⁾;*
- (b) *an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council ⁽⁸⁾;*
- (c) *a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;*
- (d) *an institution for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council ⁽⁹⁾, unless a Member State has chosen not to apply that Directive in whole or in part to that institution in accordance with Article 5 of that Directive or the delegate of an institution for occupational retirement provision as referred to in Article 19(1) of that Directive;*
- (e) *pension institutions operating pension schemes which are considered to be social security schemes covered by Regulation (EC) No 883/2004 of the European Parliament and of the Council ⁽¹⁰⁾ and Regulation (EC) No 987/2009 of the European Parliament and of the Council ⁽¹¹⁾ as well as any legal entity set up for the purpose of investment of such schemes;*
- (f) *an alternative investment fund (AIF) managed by an AIFM as defined in point (b) of Article 4(1) of Directive 2011/61/EU or an AIF supervised under the applicable national law;*
- (g) *UCITS in the meaning of Article 1(2) of Directive 2009/65/EC;*
- (h) *a central counterparty as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council ⁽¹²⁾;*
- (i) *a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council ⁽¹³⁾.*

FFI proposes that the exception on financial institution should cover more entities (similarly as in ATAD) and the exclusion should be based more on how the entities are defined in the relevant governing legislation similarly as in ATAD. The exclusion should also cover e.g. pension institutions / pension funds, fund managers and providers of other lending than mortgages directly.

3 Specifically on the definition of mortgage institution

The definition of mortgage institution has the following requirement:

*“c) That accepts repayable funds **from the public** for the purpose of granting credits for its own account in the ordinary course of a banking or similar business provided the*

credits are granted directly to individuals for the purchase of real estate (or refinancing of such prior credits) and it receives security for the repayment of those credits in the form of mortgages...”

It should be noted that the requirement of collecting funds from the public makes the application of the exemption more difficult in a manner that does not take sufficiently into account differences between how business can be organized. Some groups organize themselves in a manner where funds can be collected from e.g. another group entity. In this kind of situation, the exemption would not apply and the outcome could be quite random. **For this reason FFI requests that the requirement to collect funds from the public should be removed.**

Furthermore FFI requests that the exclusion should also cover other lenders also than mortgage institutions (e.g. corporate financing).

FINANCE FINLAND

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