

To: International Co-operation and Tax Administration Division, OECD/CTPA
Sent electronically to: taxpublicconsultation@oecd.org

Brussels, 3 February 2023

Dear Secretariat,

EBIT's Members¹ thank the OECD for the opportunity to provide comments on the OECD public consultation document on Tax Certainty for the GloBE Rules (hereinafter 'Discussion Draft') - 20 December 2022 – 3 February 2023. Below are a few issues and open questions that EBIT believes are important for the OECD to consider. Given the urgency and short time frame, EBIT raises its issues and concerns with the scope rules in a summarising bullet point format, keeping it relatively short. At the same time, we do wish to emphasise that the listed issues and concerns in this document are not necessarily exhaustive.

EBIT's Members welcome the recognition in the Discussion Draft of the need to prevent disputes arising so far as is possible. We haven't yet seen Administrative Guidance, and there is a danger that not all countries will follow it, but there is an opportunity to deal on an initial and ongoing basis with areas of likely dispute. Taxpayers' input should be sought in relation to these issues as well as in relation to instances where disputes need to be resolved.

However on the whole we are disappointed in terms of the content of the Discussion Draft as it is primarily an inventory of existing measures for direct tax purposes, but no practical suggestions to tackle Globe disputes are provided. The Discussion Draft's focus has to be on the need for resolving disputes in a multilateral way; the best option may be through a multilateral instrument.

EBIT's Members believe that purely domestic issues can indeed be resolved through a domestic procedure. However, domestic remedies can only settle or avoid disputes of a domestic nature (one taxpayer vs one tax authority or one jurisdictional dispute). Domestic remedies are not really suited to settle or avoid disputes with an international character because they may have no effect (other countries are not obliged to accept the domestic outcome, hence no guarantee on a internationally accepted outcome).

Although GloBE is presented as a domestic measure, cross-border issues may arise for example (see below), as well as disagreement between two or more tax authorities as a result of

- Transfer pricing audits performed in one country and not agreed upon by the other state(s)
- Other audits or withholding tax issues that have an international impact
- Disagreement on unilateral APAs with a spill over effect on GloBE calculations and application
- POPE and split ownership application
- Non acceptance of QDMTT, IIR and UTPR calculation in the other country(ies)
- Disagreement on, for example, GloBE adjustments, qualified tax credits, ...
- Different application / interpretation of the GloBE rules, commentary and administrative guidance
- ...

EBIT considers the Multilateral Convention (MLC) a better way forward to both adapt existing treaties, to create a new framework, or to link countries without a treaty. If GloBE taxation wants to be a global

¹ EBIT's Members include Airbus Group, BP, Carlyle Carrier, Caterpillar, Diageo, GSK, Huawei, International Paper, Johnson and Johnson, JTI, PepsiCo, Pfizer, P&G, Raytheon Technologies, RELX, Schroders, SHV Group and Vattenfall. For more information on EBIT see: www.ebit-businessstax.com

EBIT's comments to the OECD public consultation document on Tax Certainty for the GloBE Rules

solution, global dispute prevention and resolution mechanisms must be available. Further, an MLC may contain rules on how to solve contradictions / differences between model rules / commentary / administrative guidance.

Overcoming legal status challenges of OECD Material with a MLC

GloBE rules will be incorporated in local law and in local languages. Local judges will interpret local tax law. Many countries cannot make a direct reference in their national tax law to the work of the OECD, such as to the OECD's Pillar 2 Commentary, the OECD's Administrative Guidance, the OECD's Implementation Framework, or the OECD's Peer Review process, for deciding "qualified" nature of the rules and other ongoing work in Paris. If this is the case and the local judge looks into local tax law or local tax administration guidance only then differences could arise with respect to interpretation between local law and OECD commentary/work.

In the MLC countries may agree that they will resolve interpretation issues in light of the OECD commentary.

Overcoming internal domestic level challenges with a MLC

- overrides of decisions that are based on domestic rules (specific or special rule) may create internal tensions
- On the other hand, if the authority power is given to the competent authority to override the position of domestic administration through a MLC then this is acceptable because treaties - tax treaties - already permit this

Overcoming Technical level dispute resolution challenges with a MLC

- The MLC could provide for non-binding and binding outcomes (arbitration). The former for developing countries and latter for developed nations.
- if use is made of an 'endeavour' clause, states must indeed honour the commitment to reach agreement as far as possible

Overcoming Tax Treaty Obstacles with a MLC

The chances of conflicts between GloBE rules and tax treaties is high. The MLC could contain a clause that would state that Globe rules will prevail over national law.

EBIT's Members trust this contribution is helpful to you. EBIT is always ready to dialogue and engage.

Yours sincerely,

European Business Initiative on Taxation – February 2023

For further information on EBIT, please contact EBIT's Secretariat via Bob van der Made, Telephone: + 32 472 745 631; Email: bob@vandermadeconsulting.com).

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