

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 to the public consultation document on Pillar Two GloBE Information Return (hereinafter 'Discussion Draft') 20 December 2022 – 3 February 2023. Below are a few issues and open questions we believe are important for the OECD to consider. Given the urgency and short time frame, EBIT raises its issues and concerns in a 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.

The main objective of the Inclusive Framework, by developing the GloBE Information Return (GIR), is to make sure that the information that an MNE Group is required to file are adequate to allow tax authorities to determine the correctness of a Constituent Entity's tax liability under the GloBE Rules and perform an appropriate risk assessment. The required data are those that are considered sufficient to achieve this goal. According to the Discussion Draft the purpose is also to avoid subjecting the taxpayer to burdensome and sometimes unnecessary information requirements. The tax return requirements are left to the determination of each jurisdiction, the GIR is a separate obligation.

The required data can be grouped into the four following categories.

1. The general information about the group and constituent entities,
2. Information about corporate structure and ownership changes that occurred during the year,
3. Information about the calculation of constituent entities' effective tax rates (ETRs) and the top-up tax,
4. Information needed to calculate the allocation of any top-up tax.

OUR CONCERNS

- Our main concern is the interaction between the GloBE Information Return (GIR) and safe harbor. It seems that the safe harbor (e.g. based on Country-by-Country (CBC) data) will not reduce the GIR data collection – if so, the safe harbor has little practical effect. EBIT's Members strongly believe that GIR data for a given jurisdiction should not be requested if a safe harbor is applicable to such jurisdiction. Systems won't be ready for FY 2024. If at least during the transitional safe harbor period, we can focus on the high risk countries in terms of data collection, the manual data collection could be reduced.
- The GIR should (at least initially) be simplified in a manner that focuses on the key points: assessment and allocation of any undertaxed profit in a jurisdiction. For that, you could conceptually list the countries where you are present, and mark those as excluded which benefit from the transitional safe harbors. Countries should have the CbCR data, so they should be able to easily verify that information. For those countries where there is the need for a GloBE calculation (which are probably only a few per company), you could then list the parameters (Income, Covered Tax, ETR) and the respective top up tax. Plus maybe an indication in which country this top up tax

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 on the public consultation document on Pillar Two GloBE Information Return

will be paid (either via QDMTT, IIR or UTPR or a combination of those). We strongly believe that that would simplify the life of everyone (companies and tax authorities) significantly!

- Annex A identifies all the data points that may be necessary. In total, a lot of information is required. However, in some cases, this information will not be necessary to determine the correctness of a Constituent Entity's tax liability. It will be up to the jurisdiction to determine the necessary information. However, there is no mechanism that precludes a jurisdiction from asking for every piece of information in the return.
- Secondly, is the information absolutely necessary for achieving the goal pursued by the OECD? What is the legal basis for jurisdictions to request this information? Is it absolutely needed to share all this information with the tax authorities? What about confidentiality? The legislation doesn't have to be more intrusive than necessary.

We believe that some of the information requested is not useful. For example, section 3.3 requests information that is relevant for the computation of the ETR and the Top-up Tax, including a level of detail on deferred tax that is unlikely to be helpful to tax administrations. Section 3.4, on the other hand, is also asking for information about the Constituent Entity Computations. Why not limit the demand to an ETR and Top-up Tax Computation per jurisdiction? Calculations for each constituent entity will make the return much heavier and, in our view, does not help the tax administration. More detail would be required anyway in case a tax administration wants to audit the jurisdictions, being the sum of the resident Constituent Entities.

- Thirdly, this new regime will be very complex to implement. Indeed, much information is not yet available in ERP systems. With these new rules, information must be provided by jurisdiction and not by entity. It will be necessary for some companies to create a new set of accounts, information is now sometimes grouped by entity.
- Fourthly - there is a risk that the GIR will differ from jurisdiction to jurisdiction and that additional information is requested under the GloBE umbrella.

Conclusion

The aim pursued by the OECD with the GIR was to “strike an appropriate balance between administrative requirements and compliance concerns.” The OECD wants to reduce the administrative burden for the companies but we believe, on the contrary, that it will be costly and time consuming for companies to comply with all the requirements of the GIR.

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

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