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Submitted to
taxpublicconsultation@oecd.org

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Subject: Public consultation OECD Secretariat Proposal Global Anti-Base Erosion Proposal ("GloBE") - Pillar Two

Dear Mr Bradbury,

1. Accountancy Europe thanks the OECD for the opportunity to provide its views on the secretariat's GloBE proposal under Pillar Two. Please find below Accountancy Europe's comments on the proposals and issues raised in your consultation.
2. As mentioned in our response to '*OECD Public consultation – Addressing the Tax Challenges of the Digitalisation of the Economy*', Accountancy Europe supports in principle the concept of a minimum tax but recognises the huge issues involved with developing an international framework. These complexities are very well highlighted in this proposal.
3. Despite the technical complexity of the issue, every effort must be made to ensure that GloBE is as simple to apply as is possible, and is workable on day-to-day basis for tax administrations, taxpayers and their advisers.
4. For this reason, we believe that consolidated financial statements are the most realistic starting point for the calculation – based around International Financial Reporting Standards (IFRS).
5. We also believe that any adjustments for permanent differences should be formalised as part of the GloBE proposal so MNE groups are only faced with a single, harmonised set of adjustments. We also believe that deferred tax accounting, such as specified by *International Accounting Standard (IAS) 12 Income Taxes*, is the most practical alternative for dealing with adjustments for temporary differences.
6. It is also important that the rights of taxpayers are respected, and that tax certainty is placed at the heart of any new rules. Tax certainty would be reinforced through definitions of all the concepts and terminology used under Pillar 2, to avoid ambiguity and different interpretations by individual taxpayers and tax authorities. For example, we would welcome a clear definition of the notion of *effective tax rate* ("ETR") as many definitions exist.

7. A minimum taxation should avoid any double taxation that would both harm international trade and international economic development. The rules must prevent tax disputes and double taxation issues both through their design and by the implementation of effective and efficient dispute resolution mechanisms on a multilateral basis, with the appropriate multilateral treaty framework.
8. Whilst we understand that setting the minimum tax rate is a political decision, it is difficult to assess the likely cost-benefit ratio of the GloBE proposals without an indication of the minimum rate of tax proposed. Consequently, it is possible to consider the additional costs for both taxpayers and tax authorities arising from the GloBE proposals, but it is very difficult to ascertain whether these would be outweighed by the additional tax captured by the proposal.
9. With both Pillar One and Two proposals, we have a unique chance to modernise the international corporate income tax system based on the fundamental principles of fairness and simplicity. There will inevitably be additional costs for both business and tax authorities at the start of the process but developing a simple system, with as few ambiguities as possible, will allow automation and increased certainty and should result in lower costs of compliance in the future.
10. However, this will require the political will for countries to forgo some element of autonomy over the calculation of the tax base and agree for a closer alignment between accounting profits based on international accounting standards and taxable profits. If there is a willingness to do so, then International Financial Reporting Standards (IFRS), as issued by the International Accounting Standards Board (IASB), are the most widely used and appropriate accounting standards available.

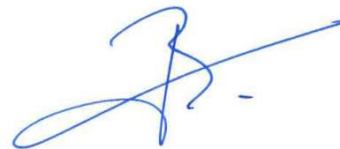
Sincerely,



Florin Toma

President

About Accountancy Europe



Olivier Boutellis-Taft

Chief Executive

Accountancy Europe unites 51 professional organisations from 36 countries that represent 1 million professional accountants, auditors and advisors. They make numbers work for people. Accountancy Europe translates their daily experience to inform the public policy debate in Europe and beyond.

Accountancy Europe is in the EU Transparency Register (No 4713568401-18).

Question 1 – Use of Financial Accounts

- a) *Do you agree that the use of financial accounts as a starting point can provide an appropriate income base (for the computation of an effective tax rate) and would simplify and reduce the compliance costs of the GloBE proposal?*
 - b) *What would be the consequences of using the accounting standards applicable to the ultimate parent entity of the MNE? Would you suggest a different approach?*
 - c) *How would you recommend determining whether a financial accounting standard is an appropriate standard for determining the tax base under the GloBE proposal?*
 - d) *Do you have concerns that allowing more than one financial accounting standard to serve as the starting point for determining the tax base under the GloBE proposal will place some MNEs at a competitive advantage due to variations in financial accounting standards among jurisdictions?*
 - e) *There may be some instances where MNEs, particularly smaller MNEs, do not prepare consolidated financial statements for any purpose. How much of an issue do you think this is and for what types of MNEs? Where this is the case, how would you suggest the issue should be addressed?*
 - f) *Are there additional or different considerations that apply to the tax base determination for purposes of an undertaxed payments rule?*
11. **Question 1 a)** We agree that the use of (consolidated) financial accounts as a starting point can provide an appropriate income base, would simplify the process and reduce the compliance costs of the GloBE proposal. Indeed, it is difficult to think of another viable alternative.
12. **Question 1 b)** We do not see any realistic, cost-effective, alternative to using parent company accounting standards, albeit ideally prepared under IFRS. There may be some mismatches in reporting standards but and the differences amongst GAAPS are fewer than the adjustments required at national level to comply with the rules for the determination of the local tax base. Using the accounting standards applicable to the ultimate parent company makes it easier for tax administrations to reconcile and audit the income of subsidiaries.
13. **Question 1 c)** There must be a single global accounting standard used and this must be specified in the proposals. As it is not linked to the tax legislation of any country and is the most globally used suite of financial reporting standards, the use of IFRS for this purpose should ideally be mandated.
14. **Question 1 d)** We are aware that some companies measure up the potential tax advantage as part of the decision-making process. However, on the whole, we would not see a high risk of accounting standard ‘shopping’. Increasingly, as part of good tax governance, multi-national companies should and are forgoing ‘aggressive tax planning’ and this would include accounting standard shopping.
15. Additionally, it would not be an easy matter to change an entity’s and, especially a group’s, use of accounting standards and, in many cases, the likely tax advantage would be insufficient for an MNE to contemplate a change. However, the risk that this could occur would be further reduced by mandating a single financial reporting standard under GloBE – i.e. IFRS.
16. **Question 1 e)** There may be some MNEs that are not required to prepare consolidated financial statements but probably not many. Where consolidated financial statements are not prepared,

consolidated financial information will often be prepared for internal management purposes and with IT solutions that exist it should be possible to produce a reasonable facsimile of consolidated financial statements.

17. Where such consolidated financial information does not exist, a solution might be to have individual accounts prepared for each entity, according to the financial accounting standards of the parent entity. This would obviously be an additional cost for the entities concerned if required to do so annually. We see this as another argument for mandating IFRS as the financial reporting basis for GloBE.
18. **Question 1 f)** Many current issues are the result of national tax authorities coming to different decisions as to what adjustments are required to turn accounting profit into taxable profit. It would not be beneficial for the GloBE proposal to include all adjustments to accounting profit made by every tax authority. Rather, during this process, the rationale for these deviations from accounting profit should be examined and only those adjustments for permanent and temporary differences that have a sound conceptual basis should be included in the GloBE.

Question 2 – Adjustments: Permanent Differences

- a) *What are the material permanent differences between financial accounting income and taxable income that are common across jurisdictions and that you think should be removed from the tax base without undermining the policy intent of the GloBE proposal?*
- b) *Do you have views on the methods that could be used for dealing with permanent differences?*
- c) *Do you have any comments on the practicality of making adjustments for permanent differences?*
- d) *Do you think any other adjustments to the financial accounts require attention?*
19. **Question 2 a)** Permanent differences are common in respect of (non-exhaustive list):
- a. No tax depreciation or allowances on polluting vehicles, machinery, or plant
 - b. No tax depreciation or allowances on (types of) real estate
 - c. No tax depreciation or allowances on certain types of goodwill
 - d. Political or charitable donations (limits may apply)
 - e. Grants and subsidies
 - f. Entertaining and 'luxuries'
 - g. Exempt dividends, participation exemptions, realised gains and losses on shares
 - h. Specific schemes to exempt certain forms of income or to tax them at a permanently lower rate (such as patent boxes).
20. **Question 2 b)** The most obvious solution would be a GloBE sanctioned list of permanent differences applied by all participating countries. This list should be based on rational criteria and be as clear and short as possible. This would require the absolute minimum number of adjustments to be made - which would facilitate automation of the process, reconciliation of the figures by tax authorities and reduce the possibility of tax competition.

21. Another alternative would be to use the adjustments for permanent differences required by the tax legislation of the jurisdiction of the parent entity, which will need to be applied to the statutory accounts of its subsidiaries. We regard this alternative as sub-optimal compared to a standard list of adjustments.
22. **Question 2 c)** Setting up systems to deal with permanent differences is likely to be highly complex but should be capable of automation. As mentioned for 2 b), the difficulties would be reduced if a standardised list of adjustments is required.
23. **Question 2 d)** In respect of permanent differences, there are good arguments for aligning the taxable profits to accounting profits under IFRS as far as possible. Any deductions not permitted should be made on a rational basis. A political decision must also be made as to what income can be permanently or partially exempted. Where specific local tax incentives have been agreed as acceptable internationally (such as non-abusive research and development credits or patent boxes, for example), adjustments should not be made for permanent differences arising from these incentives.

Question 3 - Adjustments: Temporary Differences

- a) *Do you have any comments on the use of carry-forward of losses and excess tax as a mechanism for addressing temporary differences under the GloBE proposal?*
 - b) *Do you have any comments on the use of deferred tax accounting as a mechanism for addressing temporary differences under the GloBE proposal?*
 - c) *Do you have any comments on the use of a multi-year approach to measure the average effective tax rate as a mechanism for addressing temporary differences under the GloBE proposal?*
 - d) *Do you have any comments on what limitations (if any) should be imposed on the normal financial accounting rules for deferred tax assets and liabilities and the practicalities of imposing those limitations?*
 - e) *Do you see opportunities for potential abuse in any of the approaches for addressing temporary differences described above? Do you have suggestions for designs to prevent those abuses?*
 - f) *Do you have any suggestions for alternative mechanisms for dealing with temporary differences?*
 - g) *Do you have any additional comments on Section 2, including comments based on experiences with existing regimes that you suggest should be adopted or avoided?*
24. **Question 3 a)** The three rules stipulated in *para 33 (i) Carry-forward of excess taxes and tax attributes* could provide an accurate means to deal with temporary differences, albeit at the cost of additional administrative burden. The secretariat acknowledges that this approach would require special design elements to:
- a. restrict the carry forward amounts to only temporary and not permanent differences, and
 - b. avoid the potential double counting of amounts under the carry forward of excess taxes and the carry forward under the income inclusion rule.

These design elements would increase complexity for both taxpayers and tax authorities.

25. Additionally, in many jurisdictions, the main source of temporary timing differences will arise for differences between book and tax depreciation on fixed assets and it may take many years for

these to reverse. This means that the MNE would have to maintain several memorandum accounts for all its subsidiaries, recording timing differences going back potentially to many preceding accounting periods. Whilst this is technically possible, it is likely to require substantial investment and we would question whether this investment is justified in terms of the objectives.

26. **Question 3 b)** In our opinion, a better alternative is to use deferred tax accounting. However, the accounting standard used must use the full-provision basis (such as IAS 12), as the partial-provision basis requires too much judgement to be exercised.
27. One advantage of deferred tax accounting is that those in charge of preparing the consolidated financial statements only have to comply with a single set of financial reporting standards and not have to contend with the local tax law of the jurisdictions concerned. The only adjustments would be at a parent company level, using an agreed single set of rules.
28. Moreover, deferred tax accounting should impose little additional recordkeeping burdens on taxpayers. On the contrary, carry-forward mechanisms, although potentially more accurate, oblige taxpayers to maintain memorandum accounts that track the amount of the excess taxes and losses available for carry-forward, for what could be long periods.
29. **Question 3 c)** We think that there are so many issues with the multi-year approach that it is unsuitable as a basis for dealing with temporary differences. For example, there is the difficult issue of deciding the period over which averaging would be applied - too short a period may not deter avoidance but too long a period would result in additional complexity and administrative costs. There are also major issues about how start-ups and major reorganisations would be dealt with.
30. **Question 3 d)** Unless fraud is involved, generally speaking, tax authorities do not have issues with statutory financial statements. The issues that arise tend to be over interpretations in respect of:
 - a. the permanent and temporary differences required by local tax law and legal arguments relating to the applicability and
 - b. the use of tax planning vehicles or structures permitted under local national law or the national law of another country.Consequently, we do not see the need for limitations on normal financial accounting rules for deferred tax assets and liabilities – especially if a single international standard is mandated.
31. **Question 3 e)** There is always the possibility of abuse. However, we do not consider that this will be so systematic that significant specific anti-abuse provisions should be built in that affect all relevant taxpayers – abuses should be dealt with on a case by case basis and could be covered by general anti-abuse rules, where implemented. Such abuses are best dealt with by better audits, by increased adoption of codes of conduct and by external tax assurance.
32. **Question 3 f)** None.
33. **Question 3 g)** The solution should facilitate automation of the tax compliance process – combined with regulated self-assessment supported by independent tax assurance.

Question 4 - Blending

- a) *How would you assess the general compliance costs and economic effects of a GloBE proposal that is based on either an entity, jurisdictional or worldwide blending approach?*

34. Changeover costs are likely to be significant. However, ongoing compliance costs should be manageable, in particular with increasing use of real time reporting and if the ultimate solution lends itself to automation. Ultimately, it is possible that a well-designed system will ultimately reduce costs for taxpayers and tax authorities alike, due to greater certainty and reducing the possibilities for disputes both between taxpayers and tax authorities and between different tax authorities. We would also question whether cost of compliance is the most important issue. The choice of blending models could have a direct political impact as worldwide blending will only affect the business model of the group as a whole – jurisdictional blending or entity blending brings more focus on the tax policies of individual countries.
35. That being said, we believe that there is a considerable difference in the likely costs of the three blending approaches. We would regard worldwide blending being the least costly for all parties, with entity-level blending being the most costly to administer.

Question 5 - Effect of blending on volatility

- a) *In the absence of any of the approaches for addressing temporary differences discussed in Section 2, do you consider that a worldwide approach would be effective at managing the volatility issues discussed above?*
36. We believe that the worldwide approach is better than the jurisdiction or entity approach to reduce timing temporary differences and profit/loss shifting within the group.

Question 6 – Use of consolidated financial accounting information

- a) *Assuming that the MNE's income for purposes of the GloBE proposal would be determined by reference to financial statements (adjusted as necessary) and assuming further that an MNE already prepares consolidated financial accounts, what are likely to be the compliance implications for MNEs in (i) separating the income and taxes of their domestic and foreign operations under a worldwide blending approach, (ii) separating the income and taxes to a jurisdictional level, or (iii) breaking down income and taxes to an entity level?*
- b) *How would these compliance implications change if the income for purposes of the GloBE proposal was determined by reference to the rules used for calculating the tax base in the shareholder jurisdiction?*
37. **Question 6 a)** Using a jurisdictional or entity basis seems to contradict the aim of determining the effective tax rate for the MNE group as a whole. Additionally, we could see significant issues with marrying the entity blending approach with the secretariat's proposal concerning Pillar One.
38. Compliance costs are likely to be higher in the jurisdictional or entity blending approaches - requiring the breakdown of income to jurisdiction or entity levels and meaning that advance rulings would be desirable or even necessary to create legal certainty with the home country tax authority.
39. However, if a less complex and internationally agreed system can be developed, costs in the long-term should be reduced. We would suggest that it would be worthwhile to model the various blending possibilities over a significant number of jurisdictions. This would allow the calculation of the costs of the three blending proposals over the short to long-term, which could then be compared to the potential benefit in reducing tax avoidance that the entity or jurisdiction blending options may produce.
40. **Question 6 b)** Using the shareholder jurisdiction's rules would have the merit of having only a single set of rules that the MNE would need to apply and may be necessary where consolidated

financial statements are not prepared. However, inconsistencies between jurisdictions' tax rules could create tensions. There is also the issue of defining the 'shareholder jurisdiction'.

41. Also, we believe that following this route would be to miss the potential for creating a set of simplified and standardised international rules, which would be a lasting benefit of this process.

Question 7- Allocating income between branch and head office

- a) How would you suggest to apportion the income of an entity between the branch and the head office and do you think it should follow what is done for tax purposes?*
- b) What are the compliance implications of such an allocation under a worldwide, jurisdictional and entity blending approach?*
- c) Is the compliance impact smaller for those MNEs that are subject to CbC reporting requirements and that are already required to report the income of a branch and head-office separately even where no such requirement exists under financial accounting rules?*

42. **Question 7 a)** We believe that apportionment between branch and head office should follow what is done for tax purposes, provided it is done on the basis of agreed global principles. It makes sense that the tax levied on branches applies only to the branches' income.

43. **Question 7 b)** See our response to Question 6 b) above.

44. **Question 7 c)** Costs should be reduced if the entities concerned already report under CbC because they should already have the reporting infrastructure in place. This, of course, presupposes that CbC rules are applied globally in a consistent manner.

Question 8- Allocating income of a tax transparent entity

- a) How would you suggest to apportion the income of a transparent entity and do you think it should follow what is done for tax purposes?*
- b) What are the compliance implications of such an allocation under a worldwide, jurisdictional and entity blending approach?*
- c) Is the compliance impact smaller for those MNEs that are subject to CbC reporting requirements and that are already required to report the income of a transparent entities separately even where no such requirement exists under financial accounting rules?*

45. **Question 8 a)** See our response to Question 7 a) – the issues are broadly the same.

46. **Question 8 b)** See our response to Question 6 b).

47. **Question 8 c)** See our response to Question 7 c)

Question 9- Crediting taxes that arise in another jurisdiction

- a) How would you suggest dealing with attributing taxes that arise in another jurisdiction or entity under a jurisdictional or entity blending approach?*
- b) What comments, if any, do you have on the practicality of crediting taxes paid in an intermediate jurisdiction or entity, such as under a CFC rule, against income of the subsidiary or branch?*

48. **Question 9 a)** As mentioned above, our preference is for worldwide blending. Tax withheld on dividends received from outside the group should be taken into account when computing the ETR.

49. That being said, under the jurisdictional or entity approach we believe that there should be a full offset of foreign taxes (and not a credit method) to ensure a single global rate is applied.
50. **Question 9 b)** Tax paid under CFC rules should be treated as paid in the jurisdiction or entity where income is treated as arising. Similarly, tax paid on income allocated to a branch, paid at the level of the head-office, should be treated as tax paid in the branch jurisdiction. Tax credit systems have proven to be complex and frequently very slow in operation.

Question 10- Treatment of dividends and other distributions

- a) *Assuming that the starting point for calculating the income of the MNE under the GloBE proposal is based on the financial accounts do you have any comments on the practicality of dealing with taxation of dividends under worldwide, jurisdictional and entity blending approaches?*
- b) *Do you have any comments on how the taxation of dividends should be dealt with under the GloBE proposal?*
- c) *Are there any other issues that you wish to highlight regarding worldwide, jurisdictional or entity blending?*
51. **Question 10 a)** Under the worldwide blending option, most dividends would be eliminated on consolidation. This is one significant simplification under the worldwide blending approach. The treatment of dividends should follow current practice, which normally provides for exemption in the country of the receiving entity with withholding tax exemptions or reduction for corporates in the source country.
52. Withholding tax suffered on dividends from outside the group would need to be factored into the ETR calculation. Withholding tax should always be considered as having been paid where the dividend is received.
53. **Question 10 b)** As per question 10 a).
54. **Question 10 c)** None

Question 11- Carve-outs

- a) *Do you have any comments, based on your own experience, as to the preferred design of a carve-out taking into account factors such as simplicity, compliance costs, certainty, incentives and behavioural impacts?*
- b) *Are there any technical or compliance considerations that would make you concerned about a particular type of carve-out (i.e. based on facts and circumstances or on a formulaic approach), or suggest that there should be no carve-outs at all? If so, please explain based on your own experience.*
- c) *Would you favour thresholds based on the size of the taxpayer? If so, please give your reasons and suggest a metric that you think should be used.*
- d) *Would you favour any de minimis carve-outs? If so, what type of carve-out do you consider would result in the right balance between compliance costs and benefits?*
- e) *Would you favour a carve-out for specific sectors or industries? If so, please state the sector or industry, explain your reasons and share thoughts on how such a carve-out could be operated with as little compliance cost and uncertainty as possible.*
- f) *Do you have any additional comments on carve-outs, including comments based on experiences with existing regimes that you suggest should be adopted or avoided?*

55. **Question 11 a)** Should the system be sufficiently well designed, carve-outs should not be necessary. In any event, the principle of equality should be paramount when considering whether to build carve-outs into the GloBE proposal.
56. **Question 11 b)** As above, we do not see the necessity or desirability of carve-outs.
57. **Question 11 c)** Equally, a well-designed, simplified system should be applicable to all taxpayers - particularly if it leads to simplified procedures that would be a real benefit to smaller entities with cross-border presence.
58. However, in the short-term at least, we would recommend that the GloBE proposals are restricted to only the largest MNEs so that issues can be resolved. In this respect, the BEPS Action 13 € 750 million threshold would be appropriate – especially given the links made to CbC reporting above.
59. **Question 11 d)** We do not see the need for de-minimis carve outs.
60. **Question 11 e)** We do not see the need for any carve-outs based on specific sectors or industries.
61. **Question 11 f)** None