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Public consultation on a "Unified Approach" to Pillar One

Dear Sir or Madam,

Thank you for the opportunity to comment on the consultation document Secretariat Proposal for a "Unified Approach" under Pillar One". The German Insurance Association (GDV – Gesamtverband der Deutschen Versicherungswirtschaft e.V.) is the federation of private insurers in Germany. Below, we provide you our comments on the consultation document.

1. Scope.
Under the proposed "Unified Approach", Amount A would focus on, broadly, large consumer (including user) facing businesses. What challenges and opportunities do you see in defining and identifying the businesses in scope, in particular with respect to:

a. their interaction with consumers/users

Comment:
The Public Consultation Document of the OECD points out that Pillar 1 focuses on the reallocation of profits of businesses that create meaningful value without a traditional physical presence in the market.

Given this policy rationale, it does not seem justified to include the insurance sector in the scope. In general, the insurance business is not highly digitalised and does not interact remotely with customers but through a local presence in the market states. The physical presence often leads to substantial taxation in the market state under the rules of the OECD guidance in part IV of the report on the attribution of profits to permanent establishments. In many countries regulators require that the local presence (permanent establishment or subsidiary) holds assets to cover the risks from the policies written in the host country.

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Important risk-taking functions are also often performed by the local presence. Therefore, under traditional transfer pricing rules a considerable share of the profits can be allocated to the local permanent establishments or subsidiaries.

d. *the size of the MNE group, taking account of fairness, administration and compliance cost*

Comment:
Regarding the revenue threshold, special consideration should be given to accounting methods in the insurance business. Received premiums in the insurance business are considered the equivalent of commercial industrial revenue. Especially for life insurance products, premiums also contain savings components which are used for investment assets in the interest of the policy holder (unit linked business). These investment assets are held on behalf of the policy holders and are shown in the balance sheet separately from the insurer's capital investments. In other words, a portion of the amount shown as premiums in the profit and loss statement must be seen as economically belonging to the policy holders. Nevertheless, they are shown as insurance revenues under German GAAP unlike, for example, under IFRS 17. It is for this reason that revenues of insurance companies under German GAAP tend to be relatively high. As a consequence, even medium sized insurance companies exceed the € 750 million threshold. Banks on the other hand do not show customer deposits as revenues. Therefore, there would be no level playing field with regard to the application of the € 750 million revenue threshold.

Leaving the aforementioned aspects aside, the revenue threshold should be higher than the suggested € 750 million. We consider a € 5 billion threshold suitable. Administrative burden for companies can be expected to be greater than compliance burdens resulting from country-by-country-reporting regulations. Therefore, it seems justified to use a threshold above the € 750 million filing threshold for the country-by-country-reporting.

e. *carve outs that might be formulated (e.g., for commodities)*

Comment:
The insurance sector should be carved out since under current transfer pricing rules, substantial profits are allocated to local taxable presence because of essential risk-taking functions performed and assets held there – the latter often being prescribed by regulators. Hence, the new approach cannot be expected to lead to substantially different

profit allocation results compared to the application of traditional transfer pricing rules. Furthermore, the insurance industry cannot be seen as a highly digitalised sector.

2. New nexus.

Under the proposed "Unified Approach", a new nexus would be developed not dependent on physical presence but largely based on sales. What challenges and opportunities do you see in defining and applying a new nexus, in particular with respect to:

a. defining and applying country specific sales thresholds

Comment:

A sales threshold seems a fairly simple determinant for the new nexus. However, the threshold should be high enough in order to catch only a significant involvement in the market state. It should be at least € 50 million. Otherwise, the additional administrative burden for the companies as well as the fiscal administrations would be disproportionate.

3. Calculation of group profits for Amount A.

The starting point for the determination of Amount A would be the identification of the MNE group's profits. The relevant measure could be derived from the consolidated financial statements. In your view, what challenges and opportunities arise from this approach? Please consider in particular:

a. what would be an appropriate metric for group profit

Comment:

We are very concerned that companies might be confronted with additional accounting obligations.

To use consolidated financial statements as a starting point for the determination of Amount A is only acceptable if German GAAP are recognised. German headquarters are required by German law to compile financial consolidated statements on the basis of German GAAP if they are non-listed. Only listed companies are required to set up financial consolidated statements based on IFRS. Therefore, as the majority of German insurers are non-listed companies they only prepare German GAAP - consolidated statements. There is also a considerable number of those insurance companies that exceed the € 750 million revenue threshold. Therefore, the € 750 million threshold would not only catch companies with IFRS based accounting.

We would object any additional compliance burden resulting from a factual obligation for businesses headquartered in Germany to provide consolidated financial statements under international accounting standards only for the purpose of computing “Amount A”. If international accounting standards were to be prescribed, companies would have to prepare IFRS accounts even when the group profits result in no positive Amount A. For example, the group profit could be insufficient to exceed the profit margin for the deemed routine profit. Such accounting obligation with no fiscal effect must be seen disproportionate.

Therefore, it is imperative that German GAAP is recognised for purposes of computing Amount A (see above response to question 1 d.).

4. Determination of Amount A.

In determining Amount A, the second step would exclude deemed routine profits to identify deemed residual profits. The final step would allocate a portion of the deemed residual profits (Amount A) to market jurisdictions based on an agreed allocation key (such as sales). In your view, what challenges and opportunities arise from this approach?

Comment:

Insurance business is a volatile business. Losses of a physical presence, e.g. as a result of claims following a natural disaster in a given market state may give rise to increased pressure by the market state to demand a greater share of the home state’s profits. On the other hand the home state may not be prepared to accept the reallocation of profits to the market state without a similar mechanism for losses. Therefore, it is important that the reallocation of profits between the home state and the market states is based on clear-cut rules which are accepted by the participating states. Disputes between the participating states about the allocation of the tax base may still arise. For this case, a fast and binding dispute settlement mechanism in order to eliminate double taxation is crucial.

Yours sincerely

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