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Date

December 2, 2019

via Email: taxpublicconsultation@oecd.org

**Public consultation on a Global Anti-Base Erosion Proposal
("GloBE") - Pillar Two**

Dear Sir or Madam,

Thank you for the opportunity to comment on the consultation document "Global Anti-Base Erosion Proposal ("GloBE") - Pillar Two". 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. Questions for consultation

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?

Yes, the group's consolidated financial statements are likely to be the most appropriate starting point. The most suitable frameworks are likely to be US GAAP and IFRS, but where another national GAAP is used by the ultimate parent company for preparing its consolidated financial statements, this should be acceptable.

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?

This would be a sensible simplification. We would not suggest a different approach.

**Gesamtverband der Deutschen
Versicherungswirtschaft e. V.**

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c) How would you recommend determining whether a financial accounting standard is an appropriate standard for determining the tax base under the GloBE proposal?

There should be a white list containing accepted standards. In general, the use of general accepted accounting standards like IFRS would be a pragmatic and feasible way to achieve the desired goal of having a common tax base. However, German GAAP (HGB) should also be accepted. German headquarters are required by German law to compile financial consolidated statements on the basis of German GAAP (HGB) 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.

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 determining the tax rate under Pillar II. Therefore, it would be sensible to recognise German GAAP in a white list for purposes of computing the effective tax rate.

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?

We do not consider that there is a high risk of accounting framework arbitrage for a number of reasons:

- External commercial and regulatory factors are likely to be more significant than any tax drivers.
- Over time, the relevant frameworks are likely to converge and limit the expected long-term benefit of any arbitrage.

f) Are there additional or different considerations that apply to the tax base determination for purposes of an undertaxed payments rule?

In order to determine whether the payment is subject to tax at or above a minimum rate, only the statutory tax rate including any withholding tax on the payment and whether the recipient's state effectively includes the payment in its tax base without any tax

credits (e.g. upon dividend distribution) should be relevant. If the payment is taxed at the level of another entity, e.g. as a result of CFC rules, those taxes have to be considered when determining the tax burden as well. The actual taxation should be irrelevant. Otherwise, the payer would have to rely on the tax as assessed by the foreign tax office in order to ascertain the tax burden in the payee's jurisdiction. This would be too burdensome

If the recipient of the payment is subject to an income inclusion rule under Pillar II, this should turn off the undertaxed payments rule.

It should be considered to use a black list containing countries which undertax certain types of payments.

2. Questions for consultation

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?

Dividends and capital gains which in most jurisdictions benefit from a participation exemption should be removed from the financial accounts.

As foreign exchange differences (including functional currency) shown in group accounts do not reflect economic gains / losses on trading activities, and often occur only on consolidation rather than reflecting local profits or losses these should be excluded from any calculation.

b) Do you have views on the methods that could be used for dealing with permanent differences?

They should be removed from the financial accounts.

3. Questions for consultation

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?

All three questions are answered below:

The use of deferred tax accounting is the least burdensome approach for businesses. A multi-year blending may not reflect the creation or reversal of the difference appropriately. Carry-forward of excess taxes/attributes will create an overly complex compliance burden. This could also result in blending of permanent and temporary differences, blunting the policy intent.

Insurance is particularly exposed to large long-term timing differences.

Insurance groups will often have temporary differences that impact over the long term. Some of these reflect the business model across the insurance industry, while some others reflect the long-term nature of insurance contracts. For example:

- tax base / accounting base of investments can often differ (fair value vs amortised cost) and due to the significant amounts of investments held, this could be a big issue for insurers.
- the value in-force ('VIF') of acquired life business may be recognized on the group balance sheet but not individual company balance sheets.

The multi-year approach should be available as an option, especially under an entity or jurisdictional blending approach. In order to smooth out long running temporary differences, the averaging period has to encompass a sufficient number of years. Furthermore, in cases where a low tax rate in a current year leads the average tax rate to fall under the minimum rate in preceding years, the income inclusion rule should only be applied to the current year. The income inclusion rule should not be retroactive to preceding years.

In addition, the approach is no solution for permanent differences. Therefore, the financial accounts used for averaging have to be adjusted in order to remove those differences.

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?

The operation of deferred tax rules is complex and framework dependent (US GAAP and IFRS have differing requirements and exemptions e.g. with respect to initial recognition exemptions and 'grossing up'). Material distortions could arise due to consolidation adjustments (e.g. intangibles/VIF) recognized in group consolidated accounts but not included in local accounting/tax bases.

Deferred tax asset recoverability / valuation allowances would distort the use of deferred tax to provide a proxy for a smoothed ETR. We, therefore, recommend that if the deferred tax route is taken, this must be adjusted to remove recoverability/valuation allowance issues to ensure a fair comparison. Changes to local tax rates could impact upon the carrying value of deferred tax attributes. As these do not reflect the economic result of the group, tax charges/credits as a result of these revaluations should be excluded from the tax base.

4. Questions for Consultation

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?

A world wide blending approach is the preferable approach as it entails lower compliance costs in comparison with an entity or jurisdictional blending.

As the OECD itself states in the consultation paper, a blending at entity or jurisdictional level would lead to high complexity for both taxpayers and tax administrators. Whereas amounts per business line may be available, figures normally are not broken down by jurisdictions. The resulting problems would be even greater in the insurance industry due to the different ways in which insurance reserves and other insurance specific features are accounted for by different countries and the upcoming introduction of IFRS 17 will

bring new changes in the way in which many insurance groups account for insurance contracts.

By using a global blending approach it would be possible to considerably simplify most of the problems pertaining to the entity or jurisdictional blending approach. The income would only have to be separated between the MNE's domestic and the foreign operations. A granular view on every entity or every jurisdiction could be avoided. The same would apply to the treatment of dividends and intra-group transactions as they would be automatically disregarded by a calculation based on the group's consolidated financial income.

5. Questions for consultation

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?

Yes, a blending on a global level would help to reduce the volatility in the effective tax rates due to temporary differences between accountable and taxable income.

6. Question for Consultation

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?

A worldwide blending would be the least burdensome approach for businesses.

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?

Such an approach would entail higher compliance costs than calculating the effective tax rate on the basis of adjusted financial accounts.

7. Question for Consultation

b) What are the compliance implications of such an allocation under a worldwide, jurisdictional and entity blending approach?

The issue could largely be avoided under a worldwide blending.

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b) What are the compliance implications of such an allocation under a worldwide, jurisdictional and entity blending approach?

The issue could largely be avoided under a worldwide blending.

9. Question for Consultation

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?

It is a burdensome exercise to keep track of taxes that arise in another jurisdiction e.g. under a CFC rule. To avoid this issue, a world wide blending is the preferred option.

10. Question for Consultation

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?

The issue arises in any of said approaches but to a considerably lesser extent under a worldwide blending. Tax exempt dividends should be removed.

11. Question for Consultation

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.

There should be a threshold based on the group's turnover, e.g. 5 billion €.

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?

We would be in favour of de minimis carve outs related to the profit or turnover of group entities.

Yours faithfully,

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