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Via Email

RE: TEI Comments on Certain Aspects of the GloBE Information Return

Dear Ms. Knaepen:

On 6 June of this year OECD personnel met with representatives of Tax Executives Institute, Inc. ("TEI") to discuss the OECD's ongoing work drafting rules to implement Pillar Two of the OECD/G20 Base Erosion and Profit Shifting ("BEPS") Project. As a result of that meeting, TEI committed to follow up regarding certain issues arising under Pillar Two important to TEI's members. This letter sets forth issues primarily focused on the GloBE Information Return ("GIR"), along with a few suggested solutions for the OECD's consideration.

TEI Background

TEI was founded in 1944 to serve the needs of business tax professionals. Today, the organization has 56 chapters in North and South America, Europe the Middle East & Africa ("EMEA"), and Asia. TEI, as the preeminent association of in-house tax professionals, worldwide, has a significant interest in promoting sound tax policy, as well as the fair and efficient administration of the tax laws, at all levels of government. Our over 6,000 individual members represent over 2,800 of the leading companies in the world.

TEI Comments

The overarching theme of our comments set forth below is the need for coordination between and among tax authorities regarding the GIR. This includes coordination on information requests, tax return filings, payments of the various top-up taxes, refunds, and audits.

Without coordination among tax authorities, taxpayers will be faced with duplicative filing requirements, the inability to obtain refunds, and multiple and perhaps conflicting GIR audits, among other significant compliance burdens. Therefore, it is imperative that some mechanism – whether carried out by Member States and/or operated by the OECD – be in place to help alleviate what will likely be a substantial compliance burden imposed on taxpayers subject to the Pillar Two rules.

Information Requests

The GIR requests an overwhelming amount of information regarding a taxpayer's Constituent Entities. In addition, taxpayers will likely receive multiple information requests, including requests for the same data, from tax administrators in different jurisdictions. An uncoordinated flow of information requests will make it difficult for taxpayers and tax authorities to close tax years as well impose an unprecedented workload for taxpayers' internal compliance processes. In this regard, TEI welcomes the "dissemination approach" set forth in the OECD's July document regarding the GIR.[1] The dissemination approach should help ensure the correct information ends up in the hands of the proper tax administration and hopefully averts the unwelcome possibility of jurisdictions without taxing rights raising questions on the calculation and / or allocation of a Top-up-Tax.

On the other hand, jurisdictions with taxing rights may use the GIR to raise questions:

29. Jurisdictions with taxing rights in respect of another jurisdiction will use the corporate structure not only to assess whether they have such rights but also in order to verify the application of the jurisdictional blending and allocation of income and taxes from one CE to another.[2]

It is unclear how the GIR Document determines the concept of "taxing rights" in certain circumstances. For example, if a jurisdiction has a Qualified Domestic Minimum Top-up Tax ("QDMTT") in effect, is it the case that only such QDMTT jurisdiction has taxing rights and no other jurisdictions should receive information for that jurisdiction due to the QDMTT exemption? In other words, will extraterritorial information only be made available when an entity is subject to either an IIR or UTPR? In cases where it is subject to an IIR the only legal entity information that should be disclosed is that of subsidiaries. Entities outside the ownership chain should be excluded.

Further, the instructions to the GIR should include (i) a published list of jurisdictions with QDMTTs and (ii) a list of jurisdictions that have qualified GloBE rules. Without such a published (and approved) list such jurisdictions, taxpayers will not know which jurisdictions have taxing rights.

Taxpayers should also receive notice when jurisdictions share GIR with one another. For example, if a U.K. multinational enterprise ("MNE") files its GIR in the United Kingdom and the United

[1] *See Tax Challenges Arising from the Digitalisation of the Economy – GloBE Information Return (Pillar Two) available at* https://www.oecd.org/tax/beps/globe-information-return-pillar-two.pdf, pages 7-10 (the "GIR Document").

[2] *Id*. at 10.

Kingdom GIR information with ten other jurisdictions, the taxpayer should receive a notice with a summary of the information exchanged.

The approach of using corporate structure to determine taxing rights and therefore raise questions is workable for simple IIR scenarios, but not in other situations.[3] To simplify issues arising from multiple jurisdictions having taxing rights in respect of other jurisdictions, TEI recommends:

1. Applying a materiality threshold in the UTPR scenario, where jurisdictions with taxing rights of less than ten percent would refrain from raising questions on the calculation and/or allocation of a Top-up-Tax and be required to rely on the jurisdiction(s) with a higher percentage of taxing rights to verify the correctness of the relevant calculation and allocation.

2. In the above case, one jurisdiction, perhaps the first jurisdiction to raise questions or issues on audit, should be designated to coordinate information requests from other jurisdictions. This will assist taxpayers who receive multiple information requests. It also is consistent with one of the goals of the Inclusive Framework, while still reaching the desired policy outcome (the ability of jurisdictions with taxing rights to audit the return): *the Inclusive Framework has sought to avoid imposing unnecessary information collection, computation and reporting requirements on MNE Groups or exposing taxpayers to multiple, uncoordinated requests for further information in each jurisdiction that has implemented the GloBE Rules ("implementing jurisdiction"). The agreement on a standardised information return does not preclude a tax administration from requesting necessary supporting information in follow-up requests to verify compliance with the GloBE Rules under their domestic law.*[4]

Statute of Limitation Periods

The lack of a common statute of limitations period for the GIR represents significant problems, particularly when multiple jurisdictions have taxing rights and therefore an interest in auditing the GIR. Inconsistency across such jurisdictions for when the statute of limitations for issues arising from the GIR expires will cause significant uncertainty for taxpayers. Closing a taxable year will be increasingly

[3] For example, where: *Several implementing jurisdictions may have taxing rights in respect of the same jurisdiction. This may be the case, for instance, when both the UPE and a Partially-Owned Parent Entity (POPE) are required to apply the IIR in respect of a CE located in a third jurisdiction. In that case, both the UPE Jurisdiction and the POPE jurisdiction have taxing rights and an offsetting mechanism applies to avoid double taxation under Article 2.3. Equally, UTPR Jurisdictions would all have taxing rights in respect of the jurisdictions for which the Top-up Tax is not reduced to zero under Article 2.5 (rule order). As mentioned above, UTPR Jurisdictions would be considered as having taxing rights in respect of those other jurisdictions even if no Top-up Tax actually arises in respect of those jurisdictions. The Inclusive Framework will consider providing guidance on the taxing rights arising under the UTPR for UTPR Jurisdictions with a UTPR percentage of zero.* *Id*. at 9.

[4] *Id*. at 4.

difficult for taxpayers as the number of jurisdictions with taxing rights, whether under the IIR or UTPR, multiplies.

To take a simple example, assume Country A has a statute of limitations for GIR issues of six months while Country B has a GIR statute of limitations of twelve months. Assume further that Country B raises questions regarding the calculation and/or allocation of a Top-up-Tax eight months following the completion and filing of the GIR. Would the questions raised by Country B reopen the statute of limitations in Country A? Moreover, challenges arise if the questions raised by Country B result in a recalculation or reallocation of a Top-up-Tax, such that there is an under or overpayment of ToT in Country A. Would a taxpayer be able to get a refund from the relevant jurisdiction (Country A in this case) if the statute in that jurisdiction has expired or, vice versa, be required to pay additional Top-up-Tax in case of an underpayment?

In short, differing statute of limitations periods present a myriad of problematic issues. Hence, there should be a single, globally applicable, statute of limitations period for GloBE compliance purposes. If a single statute period is not possible, then the period should be the same as the UPE jurisdiction's period or the jurisdiction of the lead tax administration (if different).

Unnecessarily Detailed GIR Reporting

Notes 1.4.6. through 1.4.9 of the GIR Document, require detailed information reporting regarding ranges of effective tax rates, QDMTT Top-up-Tax payable, GloBE Top-up-Tax payable, among other things.[5] Reporting this information will be burdensome for taxpayer and, moreover, it is unclear for what purpose the information will be used. Possibly, it is linked to the peer review and monitoring process.[6] However, if that is the case, the information would only be relevant for the UPE jurisdiction, who can report it to the OECD.

GIR disclosure for UTPR jurisdictions in 2024

The UTPR takes effect in 2025, therefore it is not clear why the GIR Document requires 2024 UTPR data (calculation and allocation) to be completed for the 2024 GIR filing. That information is irrelevant, and the compliance burden associated with reporting such information should not be imposed on taxpayers.

[5] *Id*. at *Annex A2., Explanatory Guidance* at page 9.

[6] *See, e.g., 31. Finally, the reporting of aggregated GIR data on an anonymised basis will be considered as part of the peer review and monitoring process to be developed by the Inclusive Framework, such as the GloBE Income, Adjusted Covered Taxes, ETR, the Substance-based Income Exclusion, as well as Top-up Taxes. The monitoring process would also provide visibility over whether any benefits are provided by jurisdictions that are related to the GloBE Rules or the QDMTT. This will be considered in addition to developing other mechanisms to facilitate ongoing monitoring to ensure jurisdictions are applying and administering the GloBE Rules in a manner consistent with the outcomes provided for under the GloBE Rules and pursuant guidance. Id*. at 10.

Temporary Country-by-Country Reporting Safe Harbors

Recognizing the need to limit unnecessary compliance and administrative burdens for multinational enterprises ("MNE") and tax administrations, the Inclusive Framework agreed to develop safe harbors which would relieve MNEs from performing full GloBE calculations in low-risk jurisdictions during the initial years of the GloBE rules. The GloBE safe harbor[7] relies on information included in the country-by-country report ("CbCR") that certain MNEs must file under BEPS Action 13. The relevant items in the CbCR for purposes of the Transitional Safe Harbor are Total Revenue and Profit (Loss) before Income Tax of the current year, "Unrelated Party Revenue," and "Profit before Tax." Thus, TEI recommends that the OECD update its CbCR guidance regarding reporting CbCR information based on qualified financial statements to clarify that only these three items are needed to meet this requirement as the other data in the report will not be used for the Pillar Two Transitional Safe Harbor.

Other Permanent Safe Harbors

The Pillar Two temporary safe harbors are a welcome development to ease taxpayers' compliance burden under the GloBE model rules. To that end, we recommend enacting a permanent safe harbor for certain entities and MNE groups after the transitional CbCR safe harbors expire. Such entities/groups should be ones located in low-risk jurisdictions and/or have minimal activity. Criteria for implementing such a safe harbor could include:

(i) Extension of the Temporary Safe Harbors, such as the *de minimis* safe harbor of total CbCR revenue in a jurisdiction of less than €10 million and a CbCR profit (or loss) of €1 million or less (or a loss of no more than €1 million);
(ii) If extension is not possible, TEI suggests keeping the Safe Harbors, but using of FANIL in permanent safe harbor calculations (instead of "profit before tax" in CbCR);
(iii) an effective tax rate of greater than 20 percent as reported on the CbCR;
(iv) white listing jurisdictions, whether done by the OECD itself or a combination of Member States; and
(v) a jurisdictional statutory rate of 20% or higher.

UTPR Transitional Safe Harbor

TEI also welcomes the adoption of a UTPR transitional safe harbor, which provides that a UTPR Top-up-Tax will be zero for the UPE if the UPE jurisdiction has a corporate income tax rate of least 20%. We believe, however, that the current coordination rules between transitional safe harbors may significantly undercut the reporting simplifications that were an intended benefit of the safe harbors.

When an MNE qualifies for both the transitional CbCR and the transitional UTPR safe harbor in a jurisdiction in a fiscal year, the MNE is required to elect which safe harbor to apply. If, for example,

[7] Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two).

the MNE elects to apply the UTPR safe harbor, it will be precluded from relying on the CbCR safe harbor in the following year because of the "once out, always out" approach. The policy underlying the "once out, always out" rule is to allow MNEs enough time to prepare their systems and gather resources to perform a complete calculation and reporting under the Pillar Two Model Rules. If an MNE already performed a complete calculation and GIR reporting in a certain year, there is no policy reason for the MNE to be able to rely on a safe harbor in a following year. However, in the case where an MNE relied on the CbCR safe harbor in year 1 and in year 2 elects to rely on the UTPR safe harbor, we believe it is appropriate for the MNE to be able to again rely on the CbCR safe harbor in year 3 because in such a case the MNE never performed a complete Pillar Two calculation with GIR reporting. For this reason, TEI strongly recommends revising the guidance to permit taxpayers to continue to qualify for the CbCR safe harbor after electing the UTPR safe harbor in the previous year. In addition, guidance is needed to clarify the coordination of the UTPR safe harbor and transition rules, especially with respect to deferred taxes and intra-group asset transfers.

Timing for Tax Filings

The GloBE Model states the GIR should be filed no later than 15 months after a taxpayer's taxable year end. The Model, however, leaves it to local jurisdictions to determine the due date of other tax filings relevant to the GIR, such as estimated tax forms, the payment return, the QDMTT return, *etc*. Such deadlines will obviously vary from jurisdiction to jurisdiction. In addition to tax filing deadlines, taxpayers also face financial statement deadlines, for which certain tax information must be prepared. The myriad of deadlines creates constant pressure on in-house tax departments to prepare timely and accurate information.

Leaving the due dates of tax filings other than the GIR up to local jurisdictions raises the possibility that the calculation of Pillar Two's Top-up-Taxes may in effect be required before the GIR filing deadline. This mismatch would, of course, present compliance and other issues for taxpayers. Moreover, even the OECD standard of filing the GIR "no later than" 15 months after a taxpayer's taxable year end presents difficulties if jurisdictions adopt differing time periods.

As an example, a taxpayer with a financial and tax year-end of December 31, 2025, would face the following financial statement, regular tax return, and GIR filing deadlines:

- Financial Statements: March 2026 (3 months after year end)
- GIR: March 2027 (15 months)
- Corporate Income Tax return: September 2026 (local requirement, assume 9 months)
- QDMTT: before March 2027 (local requirement, but presumably similar term as Corporate Income Tax Return, e.g., 9 months)
- Payment return: May 2028 (>15 months)

Moreover, this set of filing deadlines is for a single jurisdiction. When multiple jurisdictions have taxing rights, the number of filing deadlines proliferates, the pressure on company tax departments increases, and the potential for conflicting and irreconcilable jurisdictional priorities escalates. TEI recommends the OECD set mandatory deadlines for Pillar Two tax filings to prevent these consequences from arising and ease the Pillar Two compliance burden on taxpayers.

Payment of Tax

Like tax filing deadlines, each jurisdiction has its own mechanisms to collect its regular corporate income tax. These rules often include estimated payments due well in advance of the tax return filing date. The GloBE rules appear to leave open the details of how any tax due will be remitted to local tax authorities, creating the potential for inconsistencies across jurisdictions and additional complexities for taxpayers.

For example, assume Entity A located in Jurisdiction X owns Entity B located in Jurisdiction Y and Entity C located in Jurisdiction Z. Jurisdictions Y and Z have a QDMTT, IIR, and UTPR rules for tax year 2025. Assume Jurisdiction X has not adopted the Pillar Two rules and Entity A has an ETR less than 15%, subjecting it to Jurisdiction Y and Z's UTPR rules. All entities file their corporate tax returns on a calendar year basis. For the tax year ending 2025, the corporate tax return for Entity B in Jurisdiction Y is due in March of 2026, a year in advance of the GloBE return, which will be filed in March of 2027. Jurisdiction Y requires estimated payments to be made during the 2025 calendar year. Entity C's corporate income tax return in Jurisdiction Z is due December of 2026 three months in advance of the GIR.

Assume in Scenario 1, Jurisdictions Y and Z require all taxes including UTPR taxes to be paid with or before the 2025 tax return. This will require the taxpayer to accelerate all its Pillar Two related work into one month (February 2026) to compute and pay the amount of UTPR taxes to Jurisdiction Y. This will put incredible pressure on tax departments to comply with the Pillar Two rules. We have also heard that certain tax authorities are considering having a GloBE-like return as part of the local tax return which could force tax departments into non-compliance if they must comply with the rules in a little less than a month.

Assume in Scenario 2, Jurisdiction Y requires taxes to be paid by the end of 2025 including taxes due under the UTPR rules. Based on the company's best estimate, prepared during October of 2025, Entity B estimates it will owe 1,000x of UTPR taxes. Entity B does not have the cash to make the payment so Entity A funds Entity B with a cash contribution. When the actual calculation is completed Entity B only owes 50x of UTPR taxes. Assume this change is due to both a change in the amount of top-up tax at Entity A and the mix of assets and payroll within the group. Entity B now must request a 950x refund from Jurisdiction Y which will take several months to process. When Entity B receives the cash it has no distributable reserves and a loan to Entity A would attract non-creditable WHT tax, trapping the cash in Jurisdiction Y.

TEI recommends that any tax due to a jurisdiction under the IIR or UTPR be payable on the next income tax return due to that jurisdiction. For example, taxes for 2025 would be payable as part of the 2026 estimated payments and tax payment process accompanying the 2026 return. Alternatively, jurisdictions should develop a secondary mechanism for making payments for any Top-up-Tax. Taxes payable under the GIR are due under a separate payment mechanism within 90 days of the GIR due date. TEI encourages the OECD to provide standard guidance on the payment of tax rules so that there is a consistent approach for all jurisdictions reducing the complexity of the payment rules. TEI also recommends that any solution eliminate the requirement for taxpayers to file amended corporate income tax returns to facilitate the payment of taxes under the GloBE rules.

Aggregated Reporting for Consolidated Tax Groups

We welcome the discussion of Aggregated Reporting for tax Consolidated Groups in the GIR Document. However, the requirements underlying such Reporting do not leave room for jurisdictional differences in what constitutes a consolidated group from the GloBE rules that do not impact the calculation / allocation of Top Up Tax. For example, the GIR Document requires "all consolidated entities [to be] wholly owned by the consolidating entity." However, many jurisdictions permit consolidation even if not all entities are wholly owned. As an example of insignificant deviations from the wholly owned requirement that does not impact the calculation / allocation of Top Up Tax is the 95% shareholding requirement in the Dutch / Luxembourg Tax Consolidation regime. There does not appear to be a policy rationale to exclude the aforementioned fiscal unity (and other consolidation) regimes from the option for aggregated reporting in the GIR. TEI recommends the wholly owned requirement be loosened to permit consolidation regimes such as the one above to qualify for aggregate reporting.

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TEI appreciates the opportunity to comment on issues raised by the GIR. Should you have any questions regarding TEI's comments, please do not hesitate to contact Benjamin R, Shreck of TEI's legal staff at bshreck@tei.org or + 1 202 464 8353.

Respectfully submitted,

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