



1200 G Street, N.W., Suite 300
Washington, D.C. 20005-3814
202.638.5601
tei.org

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2022-2023 OFFICERS

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Chief Tax Counsel

International Co-operation and Tax
Administration Division
Centre for Tax Policy and Administration
Organisation for Economic Co-operation
and Development
Paris, France

Via email: taxpublicconsultation@oecd.org

RE: Comments on Pillar Two – GloBE Information Return Consultation

Dear Sir or Madam:

The Organisation for Economic Co-operation and Development (“OECD”) published a public consultation document regarding a standardized GloBE information return on 20 December 2022. The GloBE information return is part of the OECD’s two-pillar approach to addressing the tax challenges arising from the digitalization of the economy. The purpose of the standardized GloBE information return is to facilitate compliance with, and administration of, the GloBE rules. The OECD asked for input from interested parties to be submitted no later than Friday, 3 February 2023. On behalf of Tax Executives Institute, Inc. (“TEI”), I am pleased to respond to the OECD’s request for comments.¹

TEI Background

TEI was founded in 1944 to serve the needs of business tax professionals. Today, the organization has 57 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.

¹ TEI is a corporation organized in the United States under the Not-For-Profit Corporation Law of the State of New York. TEI is exempt from U.S. Federal Income Tax under section 501(c)(6) of the U.S. Internal Revenue Code of 1986 (as amended).

TEI Comments

TEI commends the OECD/G20 Inclusive Framework on BEPS' ("OECD/IF") work regarding the GloBE information return. A standardized return used by all jurisdictions implementing the GloBE rules will reduce compliance and administrative costs for both taxpayers and tax authorities. The amount of information required by the proposed GloBE information return, however, is overwhelming. TEI would welcome a reduction in the amount of information required to be produced, and indeed some of the information may be unnecessary. We discuss these issues below.

Reduction in Information Required

Section 2.2 of the "data points" required to be disclosed on the proposed GloBE return asks several questions and requests substantial information regarding each constituent entity of a multinational group, as well as members of the groups that participate in joint ventures. TEI believes that much or all of this information does not need to be disclosed as it is extremely onerous to do so on an entity-by-entity basis.

In addition, the OECD should identify the individual country taxes that constitute "compliant" qualified domestic minimum top-up taxes ("QDMTT") under the Pillar Two rules. In that case, there would be no need to disclose individual legal entity information as jurisdiction-by-jurisdiction computations would suffice.

With respect to the calculation of whether a multinational group pays an effective tax rate of 15% in a particular jurisdiction, the framework set forth in the proposed GloBE return suggests that all jurisdictions apply the same rules. If this is the case, then there would be no need to provide information on an entity-by-entity basis because a 15% rate would be guaranteed and, again, jurisdictional computation would suffice. If this does not provide sufficient certainty, an alternative would be to require constituent entity computation only if the GloBE income of a jurisdiction exceeds a material threshold. If the threshold is not exceeded, and the jurisdictional ETR exceeds 15%, then the risk of base erosion or profit shifting can be considered relatively low, and as a result a jurisdictional computation would again suffice.

Unnecessary Information

The information asked for on the proposed GloBE return is of limited use without additional information about a multinational group, such as the group's financial statements, working papers, etc. Disclosing all such information, however, would present data privacy concerns and it is unclear how tax authorities would be able to effectively utilize this voluminous information. Therefore, TEI recommends taxpayers only be required to complete section 3.3. "Jurisdictional Computations" of the "ETR Computation and Top-up Tax Computation" and not section 3.4., "Constituent Entity Computations." Disclosure of legal entity information should be required only if, and insofar, as it is required for a correct application of the Pillar Two rules.

An example would be the application of the IIR. If a Top-up tax is allocated to entities in IIR jurisdictions, the GloBE information return is not useful for jurisdictions without a qualifying IIR as a change to the jurisdictional or entity computations will not result in the allocation of the Top-up tax to such jurisdiction (the Top-up tax will flow to the IIR jurisdiction).

In line with Article 8.2.2.(a)² of the proposed GloBE model rules in connection with the GloBE safe harbor, TEI recommends that only jurisdictions allocated Top-up tax under the IIR be able to: (i) challenge the Pillar Two calculations made for entities residing in other jurisdictions; and (ii) require the information contemplated in section 3.4 “Constituent Entity Computations” of the GloBE information return to be calculated and reported.

Open Questions

The proposed GloBE return, of course, presently does not have status as an “official” return of any jurisdiction and is yet to be subject to audit. Consequently, there is also no statute of limitations for the return. The OECD/IF should clarify how/when the statute of limitations with respect to the return applies and expires. TEI recommends applying the timing applicable to the GloBE Safe Harbor in Article 8.2.2.(b) of the GloBE model rules to the entire GloBE information return. That is, tax authorities would have 36 months to notify the taxpayer of any issues with the information return and taxpayers would have six months to reply.

Number of Filings

There is a risk that a taxpayer may have to file different GloBE information returns in different jurisdictions due to varying local interpretations or implementation of the Pillar Two rules where there is no qualified information exchange agreement. This would result in GloBE information returns with differing computations. Similarly, any changes to the GloBE information return should be addressed. There is no provision under Article 8.1 regarding how a taxpayer would amend the proposed GloBE return. It is left to jurisdictions to decide whether their current domestic rules regarding amendments to tax or information returns will apply to the GloBE information return, or to introduce new provisions that apply only to the GloBE information return. Further guidance should be provided as part of the GloBE Implementation Framework regarding amendments to the GloBE information return, including the time frame and the method for the filing and exchange of information between Competent Authorities.

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² Article 8.2.2(a) of the GloBE model rules provides that only a jurisdiction that could be allocated Top-up Tax under the GloBE Rules if the ETR of the safe harbor jurisdiction was below the Minimum Rate could challenge the use of a GloBE Safe Harbor with respect to the safe harbor jurisdiction. This paragraph ensures that the only jurisdictions that could challenge the use of a GloBE Safe Harbor are those that are affected by their use, that is those jurisdictions that would otherwise be allocated Top-up Tax if not for the use of a GloBE Safe Harbor.

TEI appreciates the opportunity to comment on the Consultation Document. Should you have any questions regarding TEI's comments, please do not hesitate to contact Ralf Thelosen of Citco at rthelosen@citco.com or Benjamin Shreck of TEI's legal staff at bshreck@tei.org or + 1 202 464 8353.

Respectfully submitted,



Wayne G. Monfries
International President
TAX EXECUTIVES INSTITUTE