

## BEPS 2.0 – Pillar Two: the OECD issues consultation document on design of global minimum tax rules

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### Executive summary

On 8 November 2019, the Organisation for Economic Co-operation and Development (OECD) released a public consultation document on the Global Anti-Base Erosion (GloBE) proposal under Pillar Two of the ongoing project titled "Addressing the Tax Challenges of the Digitalisation of the Economy" (the Consultation Document). The Consultation Document seeks input on three technical aspects of the design of these new global minimum tax rules. The particular design proposals were prepared by the OECD Secretariat and do not represent the consensus view of the countries participating in the project as members of the Inclusive Framework.

This Alert focuses on the process described in the Consultation Document. A comprehensive Alert will be issued early next week.

### Detailed discussion

#### Background

In May 2019, the OECD released the "Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy" (the Workplan).<sup>1</sup> The Programme of Work is divided into two pillars:

- Pillar One addresses the allocation of taxing rights between jurisdictions and considers various proposals for new profit allocation and nexus rules.
- Pillar Two is the “GloBE” proposal involving the development of a coordinated set of rules to address ongoing risks from structures that are deemed to allow multinational enterprises to shift profit to jurisdictions where they are subject to no or very low taxation.

On 9 October 2019, the OECD released a public consultation document on an OECD Secretariat proposal for a “unified approach” under Pillar One and invited interested parties to submit comments no later than 12 November 2019.<sup>2</sup>

On 8 November 2019, the OECD released this Consultation Document on three design aspects relating to the GloBE proposal.

### The Global Anti-Base Erosion proposal

Pillar Two of the Workplan seeks to develop an integrated set of global minimum tax rules to ensure that the profits of internationally operating businesses are subject to at least a minimum rate of tax. The OECD has indicated that the level at which the minimum tax rate will be set is to be discussed by the participating countries once other key design elements of the proposal are fully developed.

The four components of the GloBE Proposal set out in the Programme of Work are:

- a) An income inclusion rule that would tax the income of a foreign branch or a controlled entity if that income was subject to tax at an effective rate that is below a minimum rate.
- b) An undertaxed payments rule that would operate by way of a denial of a deduction or imposition of source-based taxation (including withholding tax) for a payment to a related party if that payment was not subject to tax at or above a minimum rate.
- c) A switch-over rule to be introduced into tax treaties that would permit a residence jurisdiction to switch from an exemption to a credit method where the profits attributable to a permanent establishment (PE) or derived from immovable property (which is not part of a PE) are subject to an effective rate below the minimum rate.
- d) A subject to tax rule that would complement the undertaxed payment rule by subjecting a payment to withholding or other taxes at source and adjusting eligibility for treaty.

The GloBE Proposal would also incorporate an ordering rule to avoid the risk of double taxation.

### The Consultation Document

The Consultation Document describes design issues on which input is sought in three categories:

- Tax base determination: considering the implications of using financial accounts as a possible simplification for determining the tax base and approaches to neutralizing differences between financial accounts and taxable income.
- Blending: considering the extent to which low-tax and high-tax income within the same entity or across different entities within the same group should be combined for purposes of determining the effective tax rate.
- Carve-outs and thresholds: considering possible approaches for restricting the application of the GloBE proposal.

The Consultation Document also includes an annex that sets out illustrations of the application of the carry-forward of excess taxes and tax attributes and of the application of deferred tax accounting. All the examples are based on the potential application of the income inclusion rule.

### Next steps

Interested parties are invited to submit comments on the Consultation Document no later than 2 December 2019. The OECD will hold a consultation meeting on 9 December 2019 to give stakeholders an opportunity to discuss their comments with the Inclusive Framework countries.

### Implications

As the Consultation Document expressly states, the proposals under Pillar Two represent a substantial change to the tax architecture and go well beyond digital businesses or digital business models. These proposals could lead to significant changes to the overall international tax rules under which multinational businesses operate. It is important for businesses to follow these developments closely as they unfold in the coming months, as work continues on key technical, design, and policy aspects of the GloBE Proposal.

A comprehensive Alert on this Consultation Document will be published early next week.



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