Response to the OECD Public Consultation on Pillar Two – GloBE Information Return

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1. About the Irish Tax Institute

The Irish Tax Institute is the leading representative and educational body for Ireland's Chartered Tax Advisers (CTA) and is the country's only professional body exclusively dedicated to tax.

The Chartered Tax Adviser (CTA) qualification is the gold standard in tax and the international mark of excellence in tax advice. We benchmark our education programme against the very best in the world. The continued development of our syllabus, delivery model and assessment methods ensure that our CTAs have the skills and knowledge they need to meet the ever-changing needs of their workplaces.

Our membership of over 5,000 is part of the international CTA network which has more than 30,000 members. It includes the Chartered Institute of Taxation UK, the Tax Institute of Australia, and the Taxation Institute of Hong Kong. The Institute is also a member of the CFE Tax Advisers Europe (CFE), the European umbrella body for tax professionals.

Our members provide tax services and business expertise to thousands of Irish owned and multinational businesses as well as to individuals in Ireland and internationally. Many also hold senior roles in professional service firms, global companies, Government, Revenue, state bodies and in the European Commission.

The Institute is, first and foremost, an educational body but since its foundation in 1967, it has played an active role in the development of tax administration and tax policy in Ireland. We are deeply committed to playing our part in building an efficient and innovative tax system that serves a successful economy and a fair society. We are also committed to the future of the tax profession, our members, and our role in serving the best interests of Ireland's taxpayers in a new international world order.

Irish Tax Institute - Leading through tax education

2. Executive Summary

The Irish Tax Institute welcomes the opportunity to contribute to the OECD Inclusive Framework's public consultation on the Pillar Two – GloBE Information Return. We note that the views and proposals included in this document neither represent the consensus views of the Inclusive Framework, the Committee of Fiscal Affairs (CFA) or their subsidiary bodies.

The overwhelming feedback that we have received from our members is that the extensive data to be included in the GloBE Information Return (GIR) is excessive and would result in an unwarranted administration burden on groups. While we believe that the GIR should be as streamlined as possible so as to limit the number of tax administrations that wish to audit the return, we consider that the information to be included in the GIR must be limited to that which is necessary to verify compliance with the GloBE Rules.[1]

We have outlined below our key concerns regarding the GIR which have been set out in detail in the body of this submission:

- We do not believe that it is appropriate or feasible for data to be provided on a constituent entity basis. As the GloBE Rules operate on a jurisdictional basis, it is our firm view that the data presented on the GIR should also be provided on a jurisdictional basis.

- In identifying the data points on the GIR which a MNE will be required to complete, regard must be had to any applicable safe harbours and any Income Inclusion Rules (IIRs), Undertaxed Payments Rules (UTPRs) and Domestic Minimum Top-up Tax Rules which have been identified as having qualified rule status through the multilateral review process.[2]

- The identification of qualified IIRs, qualified UTPRs and Qualified Domestic Minimum Top-up Taxes (QDMTTs) is a critical part of the implementation of the GloBE Rules and in our view, the existence of qualified rule status should limit the level of information that needs to be provided on the GIR.

- An essential part of the QDMTT Safe Harbour, which is currently being developed by the Inclusive Framework, must be to result in the simplification of the reporting requirements for MNE Groups where the safe harbour applies. This would be in line with the approach that is being adopted in respect of the reporting requirements where a transitional safe harbour or permanent safe harbour applies.

- In the absence of simplified reporting requirements where the QDMTT Safe Harbour applies, the immense compliance burden for MNEs associated with

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[1] OECD (2021), Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS, OECD Publishing, Paris, https://doi.org/10.1787/782bac33-en
[2] Pillar Two – Tax Certainty for the GloBE Rules, OECD Public Consultation Document, at paragraph 2.1.1

investing in a jurisdiction with a corporate tax rate close to, or below, the 15% minimum effective tax rate compared with jurisdictions that have higher corporate tax rates, could act as a disincentive to investment in that jurisdiction notwithstanding that it has implemented a QDMTT and is complying with Pillar Two. This is particularly important given that a QDMTT is not considered a covered tax and therefore, groups located in such jurisdictions will most likely not qualify for the transitional safe harbour or the permanent safe harbour that are based on an effective tax rate (ETR) test irrespective of the fact that the jurisdiction has implemented a QDMTT.

- If information is to be provided on a constituent entity basis, the GIR would in many cases extend to thousands of pages, placing an inordinate administrative burden on MNEs. It is questionable whether it would even be possible for MNEs to collect the necessary data for each constituent entity in time to comply with the filing deadline.

- The detailed information to be included in the GIR in respect of deferred tax items is problematic and, in our view, must be refined. Large groups may have millions of separate items in respect of which deferred tax arises and it would not be feasible to track the deferred tax movements arising on all such items on an individual basis.

- Where the GIR is filed with the tax administration of the Ultimate Parent Entity (UPE), we consider that the information to be shared with a tax administration where a constituent entity is located should be limited to that which is necessary to evaluate the correctness of that constituent entity’s tax liability under the GloBE Rules. Significant concerns around data protection and the safeguarding of commercially sensitive information would arise should the complete GIR be shared with each of the jurisdictions where constituent entities are located.

3. Information to verify compliance with the GloBE Rules

It is our firm view that the level of data proposed to be included in the GIR is excessive and would result in an unwarranted administration burden on groups. While we believe that the GIR should be as streamlined as possible so as to limit the number of tax administrations that wish to audit the return, we consider that the information to be included in the GIR must be limited to that which is necessary to verify compliance by a MNE with the GloBE Rules, having regard to any applicable safe harbours and any IIRs, UTPRs and QDMTTs which have been identified as having qualified rule status through the multilateral review process.

We do not believe that it is appropriate or feasible for data to be provided on a constituent entity basis. The GloBE Rules seek to identify jurisdictions where a MNE is subject to an ETR below 15% and it then applies a system of top-up taxes that bring the total amount of taxes paid on a MNE's excess profit in a jurisdiction up to the minimum rate of 15%. Therefore, as the GloBE Rules operate on a jurisdictional basis, we believe that the data to be included on the GIR should also be provided on a jurisdictional basis.

The GIR, completed on a jurisdictional basis, should be returned by the UPE or a Designated Filing Entity to the tax administration of the jurisdiction where it is located. That lead tax administration should have the responsibility for sharing information contained in the return, with the tax administrations in jurisdictions where the constituent entities are located, to verify their compliance with the GloBE Rules. Any data requests from individual tax authorities relating to constituent entities to verify their compliance with the GloBE Rules should be centrally managed by the lead tax administration.

As the UTPR operates as a backstop to the IIR, applying only in specific circumstances where the top-up tax is not brought into charge under an IIR, it would be expected that the UTPR will generally have a limited role to play in the operation of the GloBE Rules. Accordingly, we would question the necessity for the proposed level of information regarding the UTPR to be included in the GIR.

The proposed GIR does not resemble existing annual corporate tax returns with which companies are familiar. Indeed, the proposed level of data to be included in the GIR is not necessary to confirm compliance with the GloBE Rules and goes beyond what would generally be considered as a normal tax compliance requirement. We consider that the data to be inserted in the GIR should be more in line with what taxpayers are expected to provide in order to comply with their annual corporate tax filing requirements.

4. Qualified Rule Status

Currently, the GIR requires information to be included regarding constituent entities even where the information is not necessary to verify compliance with the GloBE Rules. The identification of qualified IIRs, UTPRs and QDMTTs through the multilateral review process is a critical part of the implementation of the GloBE Rules and we consider the existence of qualified rule status should act to limit the information to be provided on the

GIR. In evaluating the correctness of a constituent entity's tax liability under the GloBE Rules and in performing its risk assessment, a tax administration must be required to have due regard for a rule which has been determined as 'qualified'.

When implementing the GloBE Rules, it is possible that different terminology may be used in a jurisdiction's domestic legislation to that which is used in the GloBE Rules, although the underlying definitions may be the same. For example, the EU's Pillar Two Minimum Tax Directive[3] refers to the UTPR as the Undertaxed Profit Rule. Such differences in terminology, coupled with language variations are likely to create uncertainty among taxpayers and tax administrations. In our view, this further underlines the critical importance of the qualified rule status and of ensuring that a MNE can rely on the status of a rule as qualified when fulfilling its GloBE compliance requirements.

5. Safe Harbours

The OECD guidance on Safe Harbours and Penalty Relief[4] notes that the Transitional Country-by-Country Reporting (CbCR) Safe Harbour would effectively exclude a MNE's operations in certain lower-risk jurisdictions from the scope of GloBE in the initial years, thereby providing relief to MNEs in respect of their GloBE compliance obligations as they implement the rules.

The CBCR Safe Harbour would allow a MNE to avoid undertaking detailed GloBE calculations in respect of a jurisdiction if it can demonstrate, based on its qualifying CbCR and financial accounting data, that in that jurisdiction it has revenue and income below the *de minimis* threshold (i.e., the de minimis test), an ETR that equals or exceeds an agreed rate (i.e., the ETR test), or no excess profits after excluding routine profits (i.e., the routine profits test).

Stakeholders have not yet had an opportunity to fully consider the Administrative Guidance on the GloBE Rules[5] that was published on 2 February, the day before the deadline for responding to this consultation. However, we welcome the confirmation in the Administrative Guidance that in the case of both the transitional safe harbours and the permanent safe harbours, the GIR will only require the information necessary to demonstrate the qualification for the safe harbour and that information needed for the more detailed GloBE computations will not be reported because it will not be required to compute the MNE group's top-up tax liability for the jurisdiction when a safe harbour applies.

[3] Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.
[4] OECD (2020), *Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)*, OECD/G20 Inclusive Framework on BEPS, OECD, Paris. www.oecd.org/tax/beps/safe-harbours-and-penalty-relief-global-anti-base-erosion-rules-pillar-two.pdf.
[5] OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris. www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two.pdf.

We also welcome the work of the Inclusive Framework in developing a QDMTT Safe Harbour that would eliminate the need for a MNE to perform an additional GloBE calculation, in addition to the QDMTT calculation required under local law.[6]

In our view, an essential part of the QDMTT Safe Harbour must result in the simplification of the reporting requirements where the safe harbour applies. This would be in line with the approach which is being adopted for the reporting requirements in respect of the transitional safe harbour and permanent safe harbour.

In the absence of simplified reporting requirements where the QDMTT Safe Harbour applies, the immense compliance burden for MNEs associated with investing in a jurisdiction with a corporate tax rate close to, or below, the 15% minimum effective tax rate compared with jurisdictions that have higher corporate tax rates, could act as a disincentive to investment in that jurisdiction notwithstanding that it has implemented a QDMTT and is complying with Pillar Two.

Furthermore, as a QDMTT is not considered a covered tax, groups located in jurisdictions with a corporate tax rate close to, or below, the 15% minimum ETR will most likely not qualify for the transitional safe harbour or the permanent safe harbour based on the ETR test irrespective of the fact that the jurisdiction has implemented a QDMTT.

It is vital that there is meaningful consultation with stakeholders on the QDMTT to help minimise the compliance and administrative burdens for MNEs to the greatest extent possible and to improve tax certainty.

6. Practical issues arising from the GIR

Our members have concerns regarding a number of practical issues arising from the proposed level of detail to be included in the GIR. These include:

- As outlined in paragraph 3 of this submission, we do not believe that it is feasible for the GIR data to be provided on a constituent entity by constituent entity basis. If information were provided on this basis, the data points included in the GIR would result in the return extending to thousands of pages. Implementing a system to gather the information for all the data points in the GIR is likely to prove very difficult given the granular level of detail to be included on the return. Indeed, many accounting systems would not report in line with the proposed data points as reporting is often by service line or product, rather than on an entity basis.

- Sections 3.4.1 and 3.4.2 of the GIR require disclosure of additions and reductions to adjustments to the financial accounts net income (or loss) and to adjustments to the current tax expense. If reporting is on a constituent entity basis, these sections of the GIR would result in an enormous reporting requirement for entities.

[6] OECD (2020), Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris. www.oecd.org/tax/beps/safe-harbours-and-penalty-relief-global-anti-base-erosion-rules-pillar-two.pdf.

- For example, section 3.4.1(a)(2) of the GIR includes 24 data points (a. – x.). If there were 400 constituent entities in the MNE, this would result in close to 10,000 data points being completed for this section of the return alone. It is questionable whether it would even be possible for MNEs to collect this level of information for each constituent entity in time to comply with the filing deadline. Compounding this difficulty is the fact that the preparation of the return would for many MNEs coincide with their busy financial year end reporting period, as the GIR must be filed within 15 months of the last day of the reporting fiscal year.

- Concerns have been raised regarding the level of detail to be included in the GIR regarding deferred tax items. Large groups may have millions of separate items in respect of which deferred tax arises. It would not be feasible for such groups to track the deferred tax movements arising on all such items on an individual basis.

- In addition, materiality rules and recognition criteria for financial accounting purposes, for example, where there is uncertainty regarding a deferred tax item, mean that some deferred tax items are not reflected in the financial accounts. Also, it is possible that a deferred tax adjustment in the financial accounts will not flow through into ETR calculation under the GloBE Rules. We believe the information to be included in the GIR in respect of deferred tax items needs to simplified.

- It would appear that information on an intermediate parent entity and a partially-owned parent entity should be included notwithstanding that the exceptions in the GloBE Rules at Articles 2.1.3 and 2.1.5 respectively apply. In our view, this is excessive and imposes an unnecessary compliance burden on MNEs.

- The methodology for completing the return where there are multiple functional currencies in a group is unclear. For example, is the conversion to the currency of the UPE to be done when calculating the ETR or is it necessary to convert each data point?

7. Dissemination of GloBE Information

While Article 8.1 of the GloBE Rules places an obligation on each constituent entity to file a GIR with the tax administration of the jurisdiction where it is located, a constituent entity is discharged from this obligation under Article 8.1.2, when the UPE or a Designated Filing Entity files the GIR with the tax administration of the jurisdiction where it is located and the Competent Authority of that jurisdiction has a bilateral or multilateral agreement or arrangement in effect to automatically exchange the GIR with the Competent Authority of the jurisdiction of the Constituent Entity.

Where the GIR is filed with the tax administration of the UPE, it is unclear whether that tax administration will automatically report all of the information in the GIR to each of the jurisdictions where the constituent entities are located. We consider the information to be shared with a tax administration where a constituent entity is located should be limited to that which is necessary to evaluate the correctness of that constituent entity's tax liability under the GloBE Rules.

If it is the case that the complete GIR is to be shared with each of the jurisdictions where constituent entities are located, this would raise significant concerns around data protection and the safeguarding commercially sensitive information. These concerns are heightened given the granular level of detail to be included in the return on a constituent entity basis and the requirement for a MNE to disclose detailed information regarding their corporate structure.

We believe a jurisdiction should not have an automatic right to access information contained in the GIR on the basis that the UTPR may potentially apply. Instead, if a jurisdiction has concerns regarding the operation of a rule which has qualified rule status, this should be addressed through the multilateral review process (i.e., peer review) rather than at taxpayer level. If the GloBE Rules are to function efficiently, then countries must place their trust in the multilateral review process and respect the outcome of that process.

Tax administrations already have access to an abundance of data regarding MNEs through a range of sources, including automatic exchange of information and CbCR. In our view, the receipt of data contained in the GIR in addition to the vast volume of data already being received, would overload tax administrations.

If tax administrations were to receive the complete GIR, what would they do with the data and how would they audit it? Language considerations must also be taken into account. For example, what happens where a GIR which is completed in Korean is shared with tax administrations where the spoken language is English? Complications are likely to occur when translating data in such circumstances.

Undoubtedly, significant additional resources would be required by tax administrations to analyse and audit the data contained in GIRs. However, for some countries, it is likely that they will neither have the capacity nor the expertise to analyse the GIR data.