

**To:** John Peterson  
Head of Unit, GloBE (Pillar Two)  
OECD, 2, rue André Pascal  
75016 Paris

**Date:** 9 May 2023

**Subject:** GFIA letter to the OECD on Administrative Guidance on the Global Anti-Base Erosion (GloBE) Rules

Dear Mr Peterson,

The Global Federation of Insurance Associations (GFIA) gratefully acknowledges the extensive work done so far on the Global Anti-Base Erosion (GloBE) Rules and the consideration given to the insurance industry's submissions on both Pillars One and Two. However, it considers the Pillar Two administrative guidance released in February 2023 to be in need of further clarification and is therefore writing to express several concerns and provide some remedial recommendations for your consideration.

GFIA strongly recommends that the testing period for insurance investment entities be extended beyond the current four-year period to allow insurers to use capital gains accumulated in funds to stabilise investment income and to meet long-term obligations to policyholders. Ideally, it should be aligned with the tax-free retention periods foreseen under national tax law (eg, 15 years in Germany).

GFIA also believes that life and health insurance companies should be allowed to use the tax transparency election under Art. 7.5., regardless of whether they are subject to a fair-value taxation on their ownership interest. Making the election available in these cases is of particular importance if the four-year testing period under the taxable distribution method election is maintained. Otherwise, insurers that may rely only on the Art. 7.6. election as a result of the tax system in their jurisdiction would be treated less favourably.

Furthermore, additional guidance is needed for the scenario that the owner of the (insurance) investment entity is an excluded entity. Such a scenario may occur where a pension fund invests in an investment fund which is a constituent entity of the same multinational enterprise. The pension fund may be tax exempt under national law. In such a case, the Art. 7.6. election could not be made if a 15 % minimum taxation on distributions under Art. 7.6.1. were to be required. The investment fund may sometimes be owned by several group entities, with the pension fund itself holding only a small ownership interest (eg, below 50%). It should be clarified that, in such a scenario, the minimum taxation test does not apply for distributions to the pension fund. Further, it should be clarified that the election can be made regardless of the fact that an excluded entity is the entity-owner of the fund, or the fund is held by the pension fund and other group members.

If both of the above solutions are not taken on board, GFIA recommends that the allocation of taxes from the entity-owner to the constituent entity under Art. 4.3.2. e) of the model rules should be adapted. In its current state, it leads to a distorted effective tax rate (ETR) if the net base taxes of the entity-owner in the numerator are divided by the (gross) income of the entity in the denominator. As a solution, the fund's investment income could be reduced by deductible expenses that the entity owner incurred in relation to the taxable distribution they received from the fund. Using net base results on both sides of the division bar would lead to a more coherent ETR fraction.

In addition, GFIA strongly recommends that, in relation to the definition of insurance reserves, confirmation be provided that the intent of the rule is for all policyholder obligations mandated by applicable regulations, such as policyholder dividend obligation accounts on closed blocks of policies, should be treated as insurance reserves for the purposes of this rule.

GFIA would also like to request clarification on several issues related to the definition of investment funds.

- **Requirement of a number of unrelated investors:** Under German law, for example, a fund with a sole investor is recognised as an investment fund as long as the terms for its creation allow for a number of investors. The Pillar Two Commentary in Art. 10 par. 39 gives the impression that such sole investor funds would not be viewed as an investment fund. The wording seems to require a facts and circumstances test. The consequence would be that a fund that was created for a number of investors but which under the actual circumstances is owned by only one investor could not be regarded as an investment fund. Therefore, it should be clarified that a fund that is held by only one investor may qualify as an investment fund as long as the terms of its creation allow for a number of unrelated investors. Such an interpretation avoids incoherent differences in the treatment of insurance investment entities and investment entities. For example, the investment-entity qualification is extended to certain entities mentioned under (b) and (c) of the investment-entity definition. This is missing for insurance investment entities. There is no obvious rationale for the different treatment of those entities held by investment funds in both cases.
- **Wholly owned requirement:** According to the definition in Art. 10, the investment fund or real estate investment vehicle must be wholly owned by an entity that is subject to regulation as an insurance company. It is stated in paragraph 93 of the Commentary under chapter 7.5 that “the election is available to both directly owned Investment Entities and Insurance Investment Entities as well as such Entities that are directly owned through other Investment Entities or Insurance Investment Entities”. We strongly suggest adding a similar comment to the definition of Insurance Investment Entities in order to clarify that the wholly owned requirement is fulfilled where the entity is held indirectly by an owner that is subject to regulation as an insurance company.
- **Regulatory regime:** The requirement that the “entity or its management is subject to a regulatory regime in the jurisdiction in which it is established or managed (including appropriate anti-money laundering and investor protection regulation)” seems vague. It raises the question whether anti-money laundering regulation alone would constitute a “regulatory regime” and whether other requirements must be met.

Further to the above, some jurisdictions have concerns with inclusion elections as provided for in the administrative guidance. They therefore request that additional guidance is drafted whereby a constituent entity may opt for an inclusion election, such as the equity investment inclusion election, on a line-by-line basis, in order to mitigate the adverse effects of said rules under local regulation. For instance, in the US, insurance separate accounts hold the investments supporting variable insurance policies and annuities, that is policies in which cash values are invested in mutual funds or stocks. If the scope of the guidance is not optional for a US insurance company and the election instead were to apply on a jurisdictional basis to all ownership interests including assets held in an insurance company’s separate accounts, the equity investment inclusion election would create a distortion in the GloBE ETR calculation with respect to separate account securities. This would be contrary to the guidance provided in Section 3.4 of the administrative guidance on securities held on behalf of policyholders, which was drafted to address this issue.

Finally, GFIA urges you to exclude tax-exempt income on government bonds from GloBE income. Many insurers purchase government-issued, tax-exempt bonds, and the income from such prudent investments should be excluded from the GloBE tax base for insurers.

Thank you for your kind consideration.

Yours sincerely,

Mervyn Skeet

Chair, GFIA Taxation Working Group

#### About GFIA

The Global Federation of Insurance Associations (GFIA), established in October 2012, represents through its 40 member associations and 1 observer associations the interests of insurers and reinsurers in 68 countries. These companies account for 89% of total insurance premiums worldwide, amounting to more than \$4 trillion. GFIA is incorporated in Switzerland and its secretariat is based in Brussels.