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3 February 2023

Comment letter on December 2022 Global Anti-Base Erosion Rules (GloBE) implementation package

Background

GFIA appreciates the efforts made by the OECD on the Inclusive Framework ("IF"), and agree with the OECD on its objectives to (i) strike an appropriate balance between administrative requirements and compliance concerns; (ii) utilise an approach that provides tax administrations with sufficient information and tax calculations needed for them to perform appropriate risk assessments; and (iii) avoid imposing unnecessary information collection, computation, and reporting requirements on multinational enterprise (MNE) groups or exposing taxpayers to multiple, uncoordinated requests for further information in each implementing jurisdiction.

GFIA is grateful for the opportunity to respond to the IF's request for feedback in this area. GFIA is pleased to submit its comments in response to the questions from the OECD, focusing on the request for suggestions for simplified income or tax calculations that could be developed as part of the permanent safe harbors, described in the document on safe harbors and penalty relief; and to identify cases where the MNE group should not be required to collect all the data points.

GFIA agrees that incorporating the simplified compliance procedures associated with safe harbors in the development of the GloBE Information Return (GIR) is an efficient and effective manner of administering this new tax regime. GFIA agrees that incorporating the safe harbors is consistent with the OECD's view that requiring the disclosure of significant amounts of financial and tax information, especially in respect of those jurisdictions that do not give rise to a GloBE tax liability, may increase compliance costs for MNE groups.

GloBE Information Return

The GIR is one of the most significant pieces of the GloBE scheme and its development requires thorough analysis such that it does not add layers of unnecessary complexity which may lead to uncertainty. GFIA believes for this reason that the timeline for the public consultation is challenging due to the fact that most MNE insurers and many other MNE groups' priority is the year-end closing of accounts. **Given the scope and complexity of the rules, GFIA recommends that the IF follow a slower pace to enable more study and engagement with the tax community.**

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GFIA expects this additional time will allow for comments and recommendations to be made in other key areas, such as accounting for policyholder taxes of life insurance companies and accounting for taxes and income attributable to embedded derivatives in many reinsurance transactions.

The considerations of minority interests (non-controlling interest) are not aligned with international accounting standards. The current draft anticipates that the financial accounting net income or loss (FANIL) and all adjustments required to derive to GloBE financials should be net of minorities. This contradicts international accounting standards that eliminate non-controlling interests on a net-of-tax basis. GFIA would expect that the minority adjustment is a separate adjustment between the FANIL and GloBE financials.

There are also a number of industry specific issues in relation to the confidentiality of information gathered via the GloBE Information Return. The wider that taxpayer information is disseminated to stakeholders and the more information that is disseminated, the more likely that there may be information to be leaked. This could lead to potential competitive disadvantages for in-scope MNE groups compared to those that are not in-scope; for example, where jurisdictional profit margins were disclosed publicly, and competitors could adjust pricing.

It is, therefore, crucial for MNEs that the Inclusive Framework should reach an agreement on the segmentation of the GIR. A filing requirement lying with the ultimate parent entity (UPE) or the designated constituent entity (CE) for that purpose, along with limited exchange of information on a need-to-know basis with the tax authorities of other relevant jurisdictions would be a safer path to follow.

In table 2.2.1. detailed information on the "ownership interest held" is required. According to note 2.2.1.10 (Annex A2, p.7) the filing constituent entity shall report “the ownership interests directly held in the constituent entity, JV or JV subsidiary by the constituent entities, JV, JV subsidiaries, excluded entities and non-group members identified in 2.2.1.8”. The same applies to indirect ownership interests through one or more excluded entities or through non-group members.

Depending on the company structure, this can amount to a complex and repetitive set of data. The information may be relevant for the group’s calculation of tax liability and the determination of applying the charging provision. However, having to report all the required data in the GIR would lead to a considerable administrative burden. GFIA would recommend that this information should be made available only at the request of the tax authorities.

Permanent reliance on country-by-country reporting (CbCR)

As reflected in the IF’s approach to the temporary safe harbors, GFIA agrees that the IF’s objectives can be satisfied if the GIR utilises already-existing information in the country by country (“CbC”) report to the maximum extent possible. The CbC report was developed by the OECD as part of the base erosion and profit shifting (BEPS) project to address transparency concerns and should, therefore, be appropriate for the OECD’s framework for identifying and taxing low-taxed profits.

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Indeed, developing another set of information filings for the OECD that is different in scope and detail from the OECD's CbC report is inefficient and could potentially lead to confusion among taxpayers and tax authorities. A new and separate set of information filings would be overly burdensome. A simplification measure which has been proposed is the provision of a central application/solution to prevent each member state developing its own technical solutions for electronic filing. A central database that specifies which country applies a Qualified Domestic Minimum Top-Up Tax (QDMTT), an income inclusion rule (IIR) and/or an undertaxed payment rule (UTPR) would also be helpful, as it would remove the need for each group to seek clarification and monitor the different states on an individual basis. States would be obliged to submit accurate information to this central database so that it can be relied upon by business.

The risk of error and confusion increases if taxpayers were subject to three separate compliance / information regimes, especially if each regime requires the reporting of financial information based on different accounting standards and different rules. These three regimes are (1) the CbC report; (2) an annual income tax return; and (3) a GIR, which the OECD acknowledges is separate from annual tax return requirements.

The safe harbors provide welcome relief to the complexity of the GloBE calculations and reporting. The data requests in the draft GIR are at a level of detail and in a jurisdictional aggregation that, generally, does not readily exist in current accounting and reporting systems. The time and effort required to address the data requests is disproportionately large relative to the potential tax revenue that could be collected through this process. Importantly, completing the detailed data requests for entities whose income is not low-taxed — including those entities obviously taxed higher than 15% — is not an appropriate use of scarce corporate resources and provides data of very limited value to tax authorities.[1] Collating the information required for filing the complete GIR as proposed would require a substantial investment into technology and human resources, notwithstanding that the underlying information will be required for the purposes of calculating the relevant jurisdictional tax rates. Reporting the information in this manner will encourage centralisation of the collation and reporting process at the group's head office, rather than devolving the preparation and reporting at the jurisdictional level. This will both increase resource strain while focusing any additional resource in the traditionally richer jurisdictions. One example of a disproportionately large reporting requirement is the requirement in Section 3.4 of the GIR to calculate effective tax rates on a legal entity basis for Constituent Entities. This requires significant data and process change for companies to calculate and is inconsistent with a jurisdictional ETR — rather than legal entity ETR — under the GloBE rules. GFIAs views this to be an overreach and recommends that the entity-by-entity ETR be eliminated from the GIR.

[1] Paragraph 8 of Section 3 of the GIR consultation document states: "While Annex A aims at identifying all the data points that an MNE group may need to collect to calculate its GloBE tax liability, it is not expected that it will be necessary, in all cases, for the MNE groups to collect all this information in respect of every Constituent Entity and jurisdiction in order to determine whether a GloBE tax liability has arisen in respect of a particular implementing jurisdiction."

The safe harbors are intended to relieve MNEs from performing full GloBE calculations for low-risk jurisdictions. These safe harbors are identified as being only temporary and would apply to an initial period, generally three years.

The permanent safe harbors discussed in the OECD release appear to be more aligned to administrative simplifications, rather than true safe harbors. **GFIA recommends that the implementation of the Interim Safe Harbors are carefully monitored. Where these are shown to be working effectively, GFIA recommends that Permanent Safe Harbours are aligned with these, possibly using the final transition rate of 17%.**

Adjustments to CbC Information

The design of the safe harbour is focused on bright-line rules that use readily available and easily verifiable data rather than requiring the highly complex and detailed data collection and analysis that would be required for full GloBE calculations for a jurisdiction. The ETR is calculated using Profit (Loss) before Income Tax data from one source (CbC) and the income tax expense reflected in a different source (the Qualified Financial Statements). The income tax expense used for this purpose does not permit adjustments that would be generally required under GloBE (such as the allocation of CFC or Main Entity Taxes), other than the removal of taxes which are not Covered Taxes and Uncertain Tax Positions.

While GFIA appreciates the intention of using a simplified approach in determining the tax expense for the safe harbour, creating a separate calculation of tax for the safe harbour that is different from the calculation of tax under the GloBE rules, for example with respect to the allocation of taxes, can result in inconsistent results. For MNEs with the available data, GFIA believes that allocating CFC or Main Entity Taxes in accordance with the GloBE rules would help create a coherent set of analyses and would result in a better matching of income and tax expense, and be consistent with the GloBE rules. **GFIA suggests that an election be included in the Simplified ETR calculation to allow MNEs with the available data to make the allocations of Covered Taxes from one CE to another that are consistent with the GloBE rules, for example, CFC and Main Entity Taxes.**

Additionally, GFIA understands the IF's view that areas of judgement in the determination of tax expense should be eliminated in the safe harbour calculation. This is evidenced by the elimination of uncertain tax positions in the calculation of tax expense for the safe harbour. **GFIA further recommends that Valuation Allowances, which likewise require judgement and can create significant accounting complexity, should also be eliminated in the safe harbour calculation**.

Regarding net unrealised fair value losses (§73 -74), the document suggests excluding losses that exceed €50 million, without providing for symmetrical adjustments on the tax expense, as reported in the financial statements. Depending on the accounting principles applicable in the jurisdiction, such unbalance could lower the ETR, thus hindering the eligibility to the CbCR safe harbour. As insurance groups are less likely to pass the *de minimis* and

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routine profits tests, the design of the safe harbour should be refined on such issues to allow wider access for MNEs already taxed above the transitional rate.

GFIA also believes that the safe harbour calculation would be more complete and consistent with GloBE rules if the tax expense included all taxes considered to be income taxes. In that regard, **GFIA suggests that the determination of income tax expense in the safe harbour include all taxes that are considered to be paid "in lieu of" income taxes**.

It is not clear how the CbCR safe harbours can be adapted to the situation of a large-scale domestic group or MNE groups that do not file a CbCR because of non-material constituent entities not included in the consolidated financial statement. GFIA recommends that these issues are clarified.

Where the safe harbours are not available, MNE groups must apply the full set of GloBE rules. This would still create compliance difficulties in the initial phase of Pillar 2 application. It would be helpful if CbCR could not only be used as safe harbours, but also to calculate the top-up tax liability during the transition period.

Investment Entities

It is not clear to GFIA why the simplified approach is not available for Investment Entities (IE) that are located in the jurisdiction of the constituent entity owner and that have made an election under Article 7.5 or 7.6. GFIA understands that IEs create complexity when analysing the information in the CbC report. However, it is not clear how eliminating the safe harbour addresses that complexity. Moreover, there is no clear policy rationale for eliminating a safe harbour for IEs that have made these elections. **GFIA suggests that the IF develop an appropriate safe harbour for IEs that have made the elections under Article 7.5 or 7.6, rather than simply concluding that there is no compliance relief for IEs**.

Tax certainty

While there are no insurance industry-specific issues to comment on regarding tax certainty, this is a critical issue for all taxpayers seeking stability and predictability in their tax filings and payments**.** As per the Tax Certainty document released in December 2022, there is currently the view that there would be no ability for MNE groups or jurisdictions to bring an issue concerning taxation in a specific case to the Inclusive Framework on BEPS. This statement causes some concerns to GFIA's members, as the OECD has set up a highly complex set of rules and, consequently, must support states and taxpayers in the implementation of GloBE. For this reason, a special body should be created at OECD level to which general and specific inquiries can be made. GFIA respectfully requests that this body also prioritises the functioning of a **legitimate dispute resolution process that eliminates double taxation in a mandatory/binding way, as well as dispute prevention tools to reduce disputes from arising in the first place.**

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Other areas for comment

GFIA believes that the objectives attributable to simplification in the administration of the GloBE rules can be extended in jurisdictions that have implemented a QDMTT. **GFIA requests that companies operating in a QDMTT jurisdiction are exempted from the requirement to report or calculate amounts under the IIR or UTPR**. In sum, GFIA's expectation is to file the GIR with the parent entity in a jurisdiction with an IIR, and local jurisdictions that have implemented QDMTTs. Filing in jurisdictions other than these would be an overreach.

Fiscal consolidation (Tax Groups/Group Relief etc.) do not appear to have been be considered in the GloBE tax return. Where there are Tax Groups, reporting on that level instead of CE level should be possible, as some information (eg deferred tax) may not be available at CE level.

These rules are new and extraordinarily complex. MNEs have been provided with very small window of time with which to provide comments. GFIA will continue to study the new rules and respectfully notes that further comments may be submitted.

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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 67 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.