

February 3, 2023

International Co-operation and Tax Administration Division
Centre for Tax Policy and Administration
Organisation for Economic Co-operation and Development
By email to taxpublicconsultation@oecd.org

Re: Business Roundtable comments on OECD public consultation on “Pillar Two – GloBE Information Return”

Dear Sir/Madam,

Business Roundtable welcomes the OECD’s commitment to working multilaterally and with the private sector to ensure sound tax policies and straightforward tax administration, which are essential to protecting investment and economic growth.

On behalf of more than 230 chief executive officers of America's leading companies, Business Roundtable is pleased to submit comments in response to the OECD’s public consultation document of December 20, 2022 on the proposed GloBE Information Return (“GIR”) to be used for the purposes of Pillar Two by taxpayers and tax administrations.

High-level comments

- We welcome the proposal to have one standardized GIR that would be used globally and filed by an MNE only once per year with a single tax administration under a ‘submit and exchange’ protocol similar to Country-by-Country (CbC) Reporting.
- The proposed GIR is complex and lengthy, requiring a huge number of data points, many of which do not currently exist in systems. The process to collect the data will be time consuming and costly to implement and onerous to perform each year.
- The content of the GIR should be limited to only high-level data points to determine compliance and perform risk assessment, and the data should be per-jurisdiction, not entity by entity.
- To avoid duplication of data, provide consistency and synergise processes, consider building the GIR with a similar format as the current CbC Reporting package.
- It is not made sufficiently clear in the consultation document how the proposed GIR would interact with the GloBE safe harbours. It needs to be explicitly clarified that if an MNE concludes that a jurisdiction is within a safe harbour then only the information needed to complete the safe harbour section (3.2) of the GIR is required for that jurisdiction.
- The application of a QDMTT in a jurisdiction should be clearly taken into account in the GIR. QDMTT liability should be calculated utilising the same data points and GAAP basis as the MNE’s computation of top-up tax for the purposes of the IIR/UTPR.

- The proposed requirement to report all changes in group structure during the year will be extremely onerous for many MNEs, which often have hundreds or even thousands of constituent entities. Acquisitions and dispositions of entities typically occur regularly. Rather than requiring multiple iterations of an MNE's group structure in the GIR, we suggest requiring information on group structure as of the end date of the period covered by the GIR, with any necessary additional information regarding changes during the period being provided in notes to the calculations of GloBE Income and Taxes.
- We are concerned that confidentiality of taxpayer information would be at risk if the complete GIR were shared with all other tax administrations in countries where the MNE has a business presence. We support the idea of a centralised single filing, with other countries receiving only the data they need to determine whether a safe harbour applies with respect to the MNE's entities in their country, and, if no safe harbour is applicable, to calculate top-up tax related to their country.

Detailed comments

The following comments are grouped into the five areas of requested feedback on page 7 of the consultation document:

- Data points identified as necessary in the consultation document,
- GloBE Information to be reported to the tax authorities,
- Segmentation of data points,
- QDMTT reporting requirements in the GIR,
- Comments on other mechanisms to enhance tax certainty.

a) Data Points Identified as Necessary

The data points identified in the consultation document as necessary for the GIR are overly detailed and require further simplification. Many of the identified data points would require new data collection as it is not currently held centrally by MNEs, would require further manipulation, or may require the design of new processes to collect, validate and govern the data. Systems based solutions may not be feasible for some aspects. Though the final GloBE results are at a jurisdictional level, the data requirements are exponential given much is needed at an entity and account level to perform the GloBE calculations as currently described.

An alternative would be to utilise jurisdictional data for the calculations, not entity by entity data, which would seem sufficient for risk assessment and would strike a more appropriate balance between administrative burden versus compliance needs. There are similar opportunities within the approach to the GloBE Safe Harbours.

Further simplification is especially important in an environment where MNEs are facing additional workload and process change on multiple fronts, for example, public CbC reporting, Pillar One including Amount B, VAT reform, and ESG reporting.

We estimate that there would be 150-200 data points required per entity for the proposed GIR. For a typical global MNE this likely translates to many thousands of data points in total to be ascertained and manipulated. This provides potential stewardship risks and the need for additional control mechanisms, especially if an element of the early certainty process is a review of the control framework over the data collation and calculations.

Specific aspects of the **Annex A1 Data Points**:

Corporate Structure – excessive data points are required on every group entity, detailing the full corporate structure, ownership and changes year on year. It is not clear why such information is necessary for the GIR. This is information not readily available or tracked at a central level, especially the changes year on year. Data in this area is likely to be manual in nature and cannot be made systemic. We suggest that information regarding entities joining or leaving the group during the year could be provided as of the end date of the period covered by the GIR with any necessary information being provided in notes to the jurisdictional calculations related to safe harbours or GloBE Income and Taxes. Corporate structure reporting should also be limited given confidentiality risks.

ETR Computation & Top Up Tax Computation (includes Safe Harbour and Low Tax Jurisdiction Calculations) – It is positive that the summary (paragraph 3.3.1) Top-Up Tax is presented on an aggregate jurisdictional basis (as opposed to being presented on an entity by entity basis), although for many MNEs there would still have to be many summaries. For MNEs doing business globally, the number of summaries would typically exceed 50 and could exceed 100. Moreover, the calculations necessary to derive the jurisdictional level results are often based on entity-level data (and in our members' modelling of GloBE compliance, the calculations would require, for certain items, data to be identified at the level of customer accounts). This generates thousands of data points and manipulations. To simplify this effort and for the easier assimilation of the data, we suggest consideration of the following:

- **Order of Operations – Safe Harbours first.** The proposed rules for the GIR need to make it clear that where a jurisdiction meets a safe harbour threshold, no additional GloBE calculations are required (and thus the rules from paragraph 3.3 onwards would not apply). Within this, the safe harbour tests also need to take account of any QDMTT amounts already payable in a jurisdiction, and the calculation of any QDMTT should be made using the same qualified accounting standard (i.e., that of the UPE) and the same currency as is used to compute top-up tax for the purposes of the IIR and UTPR.
- **Ensure that the safe harbours are calculated utilising only UPE financial accounting data** (much of which is available in CbC reports) for the ETR, De Minimis, and Routine Profit tests. It is essential that there not be any additional calculation of GloBE Income and Taxes necessary to establish jurisdictional positions regarding the safe harbours. Unless this is true, there will be no reduction in the compliance burden from the safe harbours, as the GloBE calculations would need to be performed in full. Therefore,

paragraph 3.2.2 should be amended to clarify that the safe harbour tests will not require the calculation of GloBE Income and Taxes at a jurisdictional level.

- **Splitting entities into jurisdictional sub-groups for the safe harbour calculations adds a significant layer of complexity** (e.g., constituent entities, JVs, Minority Owned, Stateless). We question whether this would make any material difference to whether a jurisdiction passes or fails the safe harbour rules and seems like overkill on this first step of the GloBE compliance process. If it is deemed as necessary, we suggest the possible use of a threshold (at least for the transition period) whereby if the JVs, Minority Owned, and other specified entities are less than x% of the total Income of the jurisdiction, there is no requirement to split them out separately as part of the safe harbour determination. Stateless entities should however be reflected back in their jurisdiction of operation in order to calculate the complete jurisdictional safe harbor position.
- **3.3.1.3 Substance Based Carve Out Exclusion** – For the purposes of the safe harbours, we suggest that the rules should clarify that there is no requirement to complicate the calculations with allocations to PEs and flow through entities. For the purposes of the safe harbours, it would be best to leave the substance-based carve out entirely in the normal constituent entities to enable calculation of the safe harbour thresholds at a simple aggregate jurisdictional level.
- **For clarity, confirm the formula of the Top-Up Tax (paragraph 3.3.1) should be $((D) \times (F)) + (G) - (H)$ rather than as stated $(D) \times (F) + (G) - (H)$**
- **Paragraphs 3.3.1.1 and 3.3.1.2 Computation of GloBE Income and Computation of Adjusted Covered Taxes** – Again with materiality in mind, we question the need for all listed adjustments, especially at the entity level. Many of these will require manual intervention, assessment, and calculation and some of this cannot be systemised. We suggest that the number of adjustments should be reduced (at least during a transition period) to those that are most material.
- **Paragraphs 3.3.2 and 3.3.2.1 Recasting of and adjustments to deferred tax** – This will be highly tax technical, and likely a very manual operation in the GloBE calculations. It would require significant assessment by amount, entity, and jurisdiction, with most MNE accounting structures and systems unlikely to be set up to capture systemically the necessary adjustments.
- **Qualified Accounting / Currency / Language.** It is important that guidance is given to the effect that the GIR information can be based on the UPE's qualified accounting regime (e.g., U.S. GAAP for U.S. MNEs), in parent company currency (e.g., USD) and UPE language (e.g., English), and that this will be satisfactory for all tax administrations receiving the GIR or segmented information therefrom (to avoid multiple versions and rework). Further, clarity should be provided that there is no expectation of translation or connection of the GIR information to local GAAP in particular jurisdictions. This could be a similar protocol to that used in CbC reporting.

b) GloBE Information to be reported to tax administrations

The content of the GIR should be limited to only high-level data points to determine compliance and permit risk assessment, not at an audit level of detail. Moreover, data in the

GIR should be at the jurisdictional level, not entity by entity. The GIR requirements should suffice for tax administrations to judge compliance but be balanced with both the ability of tax jurisdictions to assimilate the information (especially non-UPE jurisdictions) and the ability of MNEs to bear the administrative burden of reporting. Limiting the information in the GIR will also help limit any confidentiality risk. We encourage the GIR drafting team to adopt a mindset of “what data is necessary in the GIR to determine high level GloBE compliance,” rather than prescribe mass data reporting to cover off every potential issue. The GIR should have the right data for accurate reporting, not the maximum data. This may include differentiation of data required within the GIR depending on whether a top-up tax is due with respect to a jurisdiction. Specifically, jurisdictional level results should first be provided in relation to the prescribed safe harbour tests. Only if a safe harbour is not met should the provision of the results of the GloBE Income and Taxes calculations be needed, again at a jurisdictional level rather than entity by entity. Though the mechanism for the collection of tax may be determined at a local level, it is important all jurisdictions adopt exactly the same standard GIR document without nuances, in order to limit incremental administrative burden, and to avoid duplicating information in both the GIR and local tax returns.

To avoid duplication of data, provide consistency and synergise processes, we suggest that consideration be given to building the GIR with a similar format as the current CbC Reporting package. This could achieve the same compliance objective and transmission of data in a simpler way than the proposed GIR in the consultation document. Such an approach would be more administrable for both taxpayers and tax administrators given the existing familiarity with the CbC Reporting package.

Specifically, the GIR could have a set of simple tables with the intent to provide enough data to judge GloBE compliance and perform risk assessment without excessive administrative burden. Any additional data points / work papers of calculations necessary could be ascertained during the Pillar 2 tax advanced certainty processes or audit, if they are entered into. This could be a similar process to ICAP.

- **Table 1) Safe Harbour:** One high-level tabular form covering all jurisdictions where an MNE is present, showing which safe harbour rules have been applied, and relevant data points to support the application of a specific safe harbour, without any GloBE calculations necessary. This table could also show the jurisdictions where a QDMTT has been applied.
- **Table 2) Low Tax Jurisdiction Top-Up Tax:** Only for jurisdictions where the safe harbour rules are not met, this table would show calculation of the Top-Up Tax, shown at a jurisdictional level.
- **Table 3) Allocation:** Covering only jurisdictions where the safe harbour rules are not met, this table would be one chart showing the Top-Up Tax allocation and attribution among all jurisdictions (not by entity), without detailed calculations shown.
- **Table 4) Key Information:** Blank Page Summary (comparable to Table 3 in the CbC Report)

Note that there should be no GloBE calculations necessary during the safe harbour determination process, and no GloBE calculations submitted for any jurisdictions which have met a safe harbour test.

Further clarification should also be provided regarding the necessary GIR requirements when prior year tax data or accruals are updated. Additional or replacement GIRs should not be required, in our view.

Submission & Exchange – We applaud the proposal to use a similar protocol to that of CbC Reporting, with the primary route of submission being to the parent company jurisdiction (or highest level of IIR) and subsequent exchange. However, to make this effective, the program must ensure the standard GIR format and content is accepted in all jurisdictions. Additional nuances to formats, content, translations (which has happened with CbC reporting) and hence additional submissions directly to tax jurisdictions would lead to significant extra workload for an MNE. It is also necessary to have in place a broad enough exchange program across jurisdictions to facilitate the process.

Further clarity is required on both who is the submitter of the GIR and to whom it must be submitted – would the UPE submit the form to its home tax administration (to follow subsequent exchange programs), or would the submitter and receiver be dependent upon the highest jurisdiction in the corporate structure that has implemented the GloBE rules?

It must also be clarified that tax administrations cannot require GloBE data on a local GAAP basis (as opposed to UPE GAAP), or to request reconciliation of the GIR data across different GAAPs.

Finally, it must also be clear that GIR information is to be kept confidential by tax administrations.

c) Segmentation of Data Points

Segmentation of the GIR data and providing the relevant data points to different tax jurisdictions, may be appropriate in order to provide the relevant data and limit the security risk. Further information is required on how this may work. Segmentation should be managed after submission of the GIR to the UPE, as part of the exchange program, rather than requiring MNEs to create incremental and different GIR submissions.

d) QDMTT reporting requirements within GIR

The application of a QDMTT in a jurisdiction should be taken into account within the GIR. QDMTTs should be calculated utilising the same data points and GAAP basis as the balance of the MNE's GloBE calculations. However, there should be no requirement to include in the GIR the detail of QDMTT calculation given this is a locally derived top-up tax. Though calculated on the same GAAP and currency, details should be submitted locally.

High-level validation can take place between the GIR, stating if a QDMTT has been applied, and the local return.

e) **Tax Certainty**

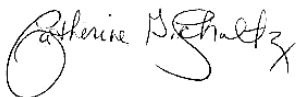
Tax certainty will be better enabled by having a GIR which is presented in a simple and clear way, limited to show both the high-level safe harbour results and the results in jurisdictions where top-up tax is due. This will enable efficient collection of tax due without disputes. From a tax certainty perspective, it should be further clarified that the sole use of the GIR is for high-level validation of compliance with the GloBE rules and for risk assessment, and not for audit or additional tax assessment.

Need for further consultation

We note that the draft provisions in the consultation document have not been agreed upon by the Inclusive Framework, and a significant number of issues are likely to be the subject of debate within the Inclusive Framework in the coming months. The public should be given the opportunity to provide comments on a future proposed version of the GIR after open issues have been discussed within the Inclusive Framework.

Business Roundtable urges the Inclusive Framework to take the above comments into account in its work on the GIR and related rules. We appreciate your consideration of these comments. Please do not hesitate to contact us if you have any questions.

Sincerely,



Catherine Schultz

Vice President, Tax and Fiscal Policy

Business Roundtable

cschultz@brt.org

+ 1 202-467-5266