

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 – Tax Certainty for the GloBE Rules”

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 Pillar Two—Tax Certainty for the GloBE Rules.

We strongly support the creation of effective dispute prevention and resolution mechanisms for the GloBE Rules. In this regard, we would like to suggest the following points for your consideration.

Multilateral convention

In our view, the GloBE regime would be improved by the creation of a multilateral convention (MLC), to be signed and ratified by all members of the Inclusive Framework on BEPS, that would address several issues, including dispute prevention and dispute resolution in relation to the application of the GloBE Rules in different jurisdictions. An MLC could provide for a multilateral MAP-type process as described in the consultation document, ensuring that MNEs would be able to request tax authorities to respond to particular issues arising under the GloBE Rules.

As noted in the consultation document, an MLC could go further and address other areas of potential uncertainty in relation to the implementation of the GloBE Rules. For example, questions have been raised as to whether a jurisdiction’s collection of top-up tax under the UTPR would violate an existing tax treaty between that jurisdiction and a jurisdiction in which low-taxed profits giving rise to part or all of the top-up tax liability were earned by an entity having no permanent establishment in the jurisdiction imposing the UTPR. A related area of

uncertainty is whether top-up taxes payable under the GloBE Rules are income taxes within the scope of tax treaties. A recent article argues that the UTPR is not an income tax but rather is in the nature of an excise tax and is therefore outside the scope of tax treaties.¹ An MLC could provide clarity regarding these and other important legal issues that are currently uncertain.

Dispute prevention and resolution rules in the GloBE Rules

The consultation document discusses the possibility of adding dispute prevention and resolution rules to the GloBE Rules, thus ensuring that all implementing jurisdictions would have the same provisions in their domestic law for tax certainty mechanisms related to the GloBE Rules. In our view, this is another approach worth pursuing, if for any reason the MLC approach is deemed to be unworkable.

Scope

We believe that any dispute prevention and dispute resolution mechanisms for the GloBE Rules should be broad in scope, permitting MNEs to obtain clarification of any *bona fide* issue arising under the rules. Limiting the scope of the mechanisms to cases of double taxation or cases involving top-up tax liability would be inconsistent with the Inclusive Framework's goal of stabilizing the international tax regime for multinational businesses. The GloBE Rules are novel and complex, and will be applied in many different jurisdictions, so there is a particular need for effective mechanisms to deal with issues of interpretation that are unforeseeable in advance of implementation.

In addition, the mechanisms for dispute prevention and resolution must be broadly applicable to cover any situation involving taxation that is not consistent with the GloBE Rules and Commentary. In particular, these mechanisms must cover situations where a jurisdiction does not properly apply the excluded income rules of Article 7 of the GloBE Rules and therefore is seeking to impose inappropriate taxation on an MNE group headed by a flow-through entity (such as a U.S. S corporation).

Similarly, the proposed administrative guidance and peer review process on rule qualification should ensure that jurisdictions are applying all aspects of the GloBE Rules consistently in accordance with the agreed design, including the rules related to excluded income under Article 7 of the GloBE Rules, which are essential for MNE groups headed by flow-through entities (such as U.S. S corporations). Failure of a jurisdiction to incorporate and apply the excluded income rules would result in taxation contrary to the agreed design of Pillar Two.

¹ Allison Christians and Stephen Shay, "The Consistency of Pillar 2 UTPR with U.S. Bilateral Tax Treaties," *Tax Notes international* (January 23, 2023)

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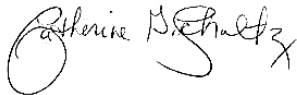
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Need for further consultation

We note that none of the possible approaches discussed in the consultation document have 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 tax certainty framework for the GloBE Rules 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 tax certainty for the GloBE Rules. We appreciate your consideration of these comments. Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine Schultz". The signature is fluid and cursive, with the first name "Catherine" written in a larger, more prominent script than the last name "Schultz".

Catherine Schultz
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