



December 2, 2019

International Co-operation and Tax Administration Division
Centre for Tax Policy and Administration
Organisation for Economic Co-operation and Development

By email: taxpublicconsultation@oecd.org

Re: Business Roundtable comments on OECD public consultation document, “Global Anti-Base Erosion Proposal (“GloBE”)—Pillar Two”

Dear Sir/Madam,

Business Roundtable welcomes the OECD’s continued commitment to working multilaterally and with the business community to promote sound tax policies and straightforward tax administration, which are both essential to protecting cross-border investment and economic growth.

On behalf of nearly 200 chief executive officers of America's leading companies, Business Roundtable is pleased to submit comments in response to the OECD public consultation document, “Global Anti-Base Erosion Proposal (“GloBE”)—Pillar Two,” dated November 8, 2019. Derek Theurer, Business Roundtable Vice President for Tax and Fiscal Policy, will attend the public consultation meeting on December 9, and we request the opportunity to speak at that meeting.

Business Roundtable emphasizes the need for a clear policy rationale to underpin the GloBE proposal, such as evidence of unaddressed risks of base erosion or profit shifting. Already agreed-upon BEPS measures require changes in tax law, treaty amendments, and regulatory implementation, and in the view of the Business Roundtable, it is still too early to assess the effectiveness of such measures. We recognize the consultation document is an interim step, and the comments below reflect concerns about the GloBE proposal’s potential adverse effect on investment, growth, and opportunity.

Overview

Business Roundtable reaffirms certain principles of international income taxation as vital to a strong and growing global economy:

- Principles of the 1998 Ottawa Taxation Framework: neutrality, efficiency, certainty, simplicity, effectiveness, fairness, and flexibility (see Appendix).
- Avoidance of double taxation.
- Taxation of net business profits, not gross revenue.
- Allocation of profits among a controlled group based on the arm’s length standard.
- Consistency of fundamental income tax rules among nations globally.
- Effective dispute resolution mechanisms.
- Proportionality of compliance burden to revenue collection.

Business Roundtable is concerned the GloBE proposal could deviate from these principles and create barriers to cross-border investment, constraining the ability of multinational businesses to expand operations, increase employment and contribute to global economic growth and opportunity.

Specific Recommendations

1. The income inclusion rule must have priority over the undertaxed payments rule.

To avoid multiple layers of taxation, the GloBE proposal must include an ordering rule that gives priority to the income inclusion rule. If the home jurisdiction of a multinational enterprise (MNE) parent company has a GloBE-compliant income inclusion rule, the undertaxed payments rule must not apply to payments made to the parent company or to affiliates covered by the income inclusion rule of the parent company's home jurisdiction.

2. The U.S. GILTI regime must be considered a GloBE-compliant income inclusion rule.

The U.S. global intangible low-taxed income (GILTI) regime requires inclusion of the foreign earnings of a controlled foreign corporation (CFC) in the U.S. parent company's income. Under GILTI, foreign earnings are subject to a global effective tax rate of at least 13.125%. The structure of GILTI departs in material respects from other proposed minimum taxes, which can result in double taxation and a minimum tax rate exceeding 13.125%. While final implementing regulations are pending, GILTI operates as a rigorous minimum tax.

Business Roundtable maintains that GILTI must be treated as fully consistent with the income inclusion rule contemplated in the GloBE proposal. As described above, GILTI, as a compliant income inclusion rule, must have priority over the undertaxed payments rule.

The GILTI regime includes worldwide blending of CFC income, and Business Roundtable recommends worldwide blending as the standard for the income inclusion rule under the GloBE proposal. GILTI and other minimum tax designs are exceedingly complicated in practice and this complexity would be further compounded if the income inclusion rule applied on a basis other than worldwide blending. At a minimum, GILTI must coexist with other GloBE minimum taxes that may be based on per-jurisdiction or per-entity blending.

3. The GloBE minimum tax rate should be calibrated to avoid undermining global growth.

Business Roundtable notes with concern a paragraph in the OECD Secretary-General's Report to the G20 Finance Ministers in October 2019 that suggested the GloBE proposal would raise a significant amount of revenue for governments. We are concerned about the macroeconomic effect of raising corporate income taxes globally. Several OECD reports¹ conclude corporate income taxes are particularly harmful for economic growth, and we thus recommend the GloBE minimum tax rate be kept as low as possible.

¹ OECD, *Tax Policy Reform and Economic Growth*, 2010.

Åsa Johansson, Christopher Heady, Jens Arnold, Bert Brys and Laura Vartia, *Tax and Economic Growth*, OECD Economics Department Working Paper No. 620, July 11, 2008.

4. An agreement on Pillar Two must include a commitment to repeal existing unilateral measures and refrain from imposing any new unilateral measures aimed at more burdensome taxation of MNE profits.

The consultation document does not discuss the necessity for the GloBE proposal, together with the Pillar One proposal, to supersede unilateral tax measures that target the same issues. Concurrent with agreement on Pillar One and Pillar Two, members of the Inclusive Framework must make a clear commitment to repeal existing unilateral measures and refrain from imposing any new unilateral measures.

5. The GloBE proposal should clarify the use of financial statements as the income base and provide for appropriate adjustments.

The OECD should clarify the rationale for using financial accounting statements as the income base for the income inclusion rule. Measured tax rates fluctuate with accelerations and deferrals of deductions and income, which are intrinsic to tax system design, natural business cycles, and company-specific growth dynamics. Regardless of the income base selected, numerous adjustments will be required to account for transitory fluctuations. Companies should not be subject to additional burdens merely because the timing of deductions and income was not more evenly distributed. Further, in the case of fiscally transparent entities, payment of taxes by the entities' owners must be considered.

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In the view of the Business Roundtable, a careful examination of the issues raised in the Pillar Two consultation document, followed by work to agree on technical details and implementation, may require exceeding the year-end 2020 timeline for a final report. We urge policymakers to set as priorities sound tax policy and long-term economic stability, rather than nominal deadlines.

Business Roundtable appreciates your consideration of these comments. Please do not hesitate to contact us if you have any questions.

Yours sincerely,



Joshua Bolten
President & Chief Executive Officer

Appendix

Ottawa Taxation Framework Conditions – Principles

Neutrality

i) Taxation should seek to be neutral and equitable between forms of electronic commerce and between conventional and electronic forms of commerce. Business decisions should be motivated by economic rather than tax considerations. Taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation.

Efficiency

ii) Compliance costs for taxpayers and administrative costs for the tax authorities should be minimised as far as possible.

Certainty and simplicity

iii) The tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction, including knowing when, where and how the tax is to be accounted.

Effectiveness and fairness

iv) Taxation should produce the right amount of tax at the right time. The potential for tax evasion and avoidance should be minimised while keeping counter-acting measures proportionate to the risks involved.

Flexibility

v) The systems for taxation should be flexible and dynamic to ensure that they keep pace with technological and commercial developments.

(OECD, *Implementation of the Ottawa Taxation Framework Conditions: The 2003 Report*, p. 13)