Addressing the tax challenges of digitalisation of the economy

International Tax | Large Corporate

01 February 2020

The CIOT has responded to the second consultation published by the OECD on addressing the tax challenges arising from the digitalisation of the economy which focuses on Pillar Two and sets out the Global Anti-Base Erosion Proposal.

We reported in January's edition of Technical Newsdesk (www.taxadvisermagazine.com/digital-challenge) the CIOT's response to the consultation published in October 2019 by the OECD Secretariat, which suggested a 'Unified Approach' to address the issues identified under Pillar One of the OECD/G20 Inclusive Framework's Programme of Work. The OECD's second consultation was published in November 2019 and requested input in relation to the Global Anti-Base Erosion (GloBE) proposal, which proposes solutions to the remaining base erosion and profit shifting (BEPS) issues which are being considered under Pillar Two.

The consultation document (https://tinyurl.com/yejycdlt) reminds us that Pillar Two is aimed at devising a set of rules 'to address the ongoing risks from structures that allow multinational enterprises (MNEs) to shift profit to jurisdictions where they are subject to no or little tax'. We commended the Secretariat for seeking to pull together the different, and sometimes opposing, political objectives that inevitably exist between nation states, overlaid by the global public opinion around these issues. In our view, it is very important to continue to seek to build global consensus because we are increasingly facing an international tax landscape of unilateral actions being taken independently by countries.

The GloBE proposal comprises four components, namely:

1. an income inclusion rule;
2. an undertaxed payments rule;

3. a switch-over rule; and
4. a subject to tax rule.

Broadly, the subject to tax rule complements the undertaxed payments rule, and the switch over rule can be viewed as a variation which builds on the income inclusion rule.

In our response, we welcomed the opportunity to remain engaged with the ongoing debate around global taxation. We set out some thoughts and views on the issues and challenges presented by the Pillar Two proposals and some points for consideration around the three technical design aspects of the GloBE proposal described in the consultation document. However, we also said that it is not, at this stage, possible to engage with all of the detailed questions set out in the consultation document because there are too many potential permutations and ramifications which could arise from the open policy and key design questions. The open questions include, for example, whether the effective tax rate will be tested on a global basis or jurisdiction by jurisdiction, which entity in the MNE group will pay any 'top up' tax due, and what the minimum effective tax rate will be. We added that we believe further consultation is essential as the policy objectives and proposals are refined.

The four components of the GloBE proposal are approaching the perceived problem from two different perspectives. We commented that it is not clear whether the fundamental principle underlying the proposal is to achieve a minimum effective tax rate for any entity, either in that entity or at shareholder level; or whether it is to allow countries to protect their own tax base from base eroding payments. We said that pursuing one of these aims should be sufficient, as succeeding in that one goal should lead to the other also effectively being addressed. We suggested that the four component parts of the GloBE proposal could be constructed so as to address either or both of these policy objectives, but they will not do so without an upfront agreement on which are the primary goals. It is important to address the underlying principle because any one of the four components would be difficult and complicated to implement effectively; the added challenge of the GloBE proposal is to address how these rules could be made to work effectively together (and with existing rules and Pillar One), without giving rise to significant levels of double or multiple taxation, and a compliance and administrative burden out of all proportion to the issues which are being addressed.

We suggested that the next step may be for the focus of the work of the Inclusive Framework to be on what is practically achievable around the overall policy objectives, which options could be accepted by individual countries and which could achieve a broad, even if not global, consensus. We suggested that, for example, it would narrow the focus of the ongoing work if a decision could be taken that the US global intangible low-taxed income (GILTI) rules are the starting point for the income inclusion rule. In any event, we consider that there are some fundamental principles that the final design of the GloBE proposal should reflect:

- providing certainty for taxpayers and tax authorities; zzminimising administration and compliance costs and complexities; and
- avoiding double (or multiple) taxation.

We noted that the consultation document raises many questions and there is currently no clarity around the overriding policy objectives and desired outcomes. In our view, the proponents may be significantly underestimating the potential complexity of the GloBE proposal. Fundamentally, we said that the GloBE proposal is far too complex and that we would like to see more work done to ascertain the extent to which new solutions are genuinely needed to address the concerns identified, given the work which has already been done under the BEPS project.

Specifically, further time should be allowed to see the full impact of the BEPS measures that have been agreed to date and are in the process of being implemented around the world, before it is decided whether this additional proposal is required; and also an impact assessment should be undertaken of the combined effects of Pillar One and Pillar Two, including an evaluation of the impact of the current BEPS measures that are being implemented. This would inform the policy makers of the scale of the remaining perceived issues that should be addressed.

Without this, it is not possible to know the scale of the additional concerns and whether it is worth the monumental effort of devising and introducing the proposed GloBE new rules, with the resulting significant and complex administrative and compliance burdens; they may be disproportionate to the issues that remain to be addressed.

Our full response can be read at: www.tax.org.uk/ref617.

Sacha Dalton
sdalton@ciot.org.uk