OECD continues its work in developing the two-pillar solution

International Tax



20 February 2023

The CIOT has responded to the recent consultations published by the OECD in relation to the two-pillar solution to reform international tax.

In December 2022, the OECD published a number of consultation documents in relation to the two-pillar solution to reform international tax agreed by the OECD/G20 Inclusive Framework on BEPS to deal with the challenges arising from the digitalisation of the global economy. The two-pillar solution aims to ensure that multinational enterprises (MNEs) pay a fair share of tax wherever they operate and generate profits.

‘Pillar One’ involves a partial reallocation of taxing rights over the profits of MNEs to the jurisdictions where consumers are located. The detailed rules that will deliver this are still under development by the Inclusive Framework. It has two components:

- Amount A aims to reallocate a portion of the profits of the largest 100 or so multinationals to the jurisdictions they operate in; and
- Amount B relates to the application of the arm's length basis to in-country baseline marketing and distribution activities.

'Pillar Two' intends to ensure that MNEs pay a minimum rate of 15% corporation tax (or their version of it) in every country they operate in. The Inclusive Framework published model legislation, known as the Global Anti-Base Erosion (GloBE) Rules) and agreed Commentary to assist countries with the implementation of these rules in 2022.

Pillar One

The first consultation published by the OECD early in December 2022 was on Pillar One – Amount B. In response to this consultation, we said that the CIOT supports the principles and the intentions around Amount B which are, broadly:

- to simplify and streamline the transfer pricing of baseline marketing and distribution activities in accordance with the arm's length principle;
- to provide an advantage to low capacity jurisdictions by guaranteeing a certain amount of income from baseline activities; and
- to increase tax certainty and reduce resource-intensive disputes between taxpayers and tax administrations in respect of these transactions.

We concluded that, unfortunately, the proposal in the consultation document fell significantly short of meeting these principles or achieving these aims. We said that, in taking this work forward, the Inclusive Framework should take the opportunity to provide real simplification in order to ensure that Amount B provides businesses and tax administrations with a tangible benefit and achieve its objectives.

We also highlighted our concern that, in addition to the significant compliance burden that will be placed on MNEs, there will be a significant resourcing burden on tax authorities. We said that the further work required on Amount B should focus on meaningful simplification to ensure that the rules achieve the intended policy objectives.

Our full response can be found at: www.tax.org.uk/ref1063

The OECD also published a consultation on the draft multilateral convention provisions that will repeal digital services taxes (and similar) as part of Amount A of Pillar One (tinyurl.com/3nukzab4). This is intended to be an integral part of achieving Pillar One's goal of stabilising the international tax architecture. The CIOT did not have any specific comments on the short clauses in the consultation document.

Pillar Two

In December, the OECD published an implementation package on the Pillar Two GloBE Rules, including details on the agreed transitional safe harbour and framework for a potential permanent safe harbour (tinyurl.com/yc745e8a). Further, on 2 February 2023 the Inclusive Framework published the first package of Administrative Guidance (tinyurl.com/4kpk4sm7) on the interpretation and administration of Pillar Two.

The OECD also published two consultations on aspects of the GloBE Rules:

- Pillar Two: Tax Certainty for the GloBE Rules: tinyurl.com/yckrmwdr; and
- Pillar Two: GloBE Information Return: tinyurl.com/msjpvsvd

Tax certainty

In our response to the consultation on Tax Certainty for the GloBE Rules, we said that this was an important step in the ongoing work in relation to Pillar Two, which is due to come into effect from 31 December 2023 in many jurisdictions, including the UK. The UK government has said that the Finance Bill due to be published after the Spring Budget 2023 will contain the rules for implementing the GloBE Rules in the UK with effect from 31 December 2023.

We noted that the consultation document scoped out some possible proposals for tax certainty developed by the OECD Secretariat, but that the Inclusive Framework has not reached consensus on them. We said that the consultation document contains some welcome ideas, but the practicality and viability of any of them is currently unclear; it is not clear to see whether there will be consensus on the potential avenues to prevent and resolve disputes in the near future, nor where this consensus would fall.

We reiterated what we have said in our previous submissions to the OECD in respect of both of the pillars: effective dispute prevention and resolution mechanisms that

achieve tax certainty will be critical to the success of the new rules. In our view, robust mechanisms will be required to prevent double (or multiple levels of) taxation and also to ensure that tax administrations and MNEs can achieve certainty as to the amounts of tax that are due. It is also our strong view that dispute prevention and resolution mechanisms should be binding on tax administrations.

Also, as we have said previously, resource will be one of the key challenges in achieving tax certainty. We said that countries should be encouraged to commit to providing the additional resource that will be required.

We agreed that there are two aspects of certainty arising from the GloBE Rules. The first is around clarity of the rules, in order to prevent disputes so far as possible. The second is around resolving disputes that will inevitably arise. We welcome the continued focus on dispute prevention as, while dispute resolution is necessary, it is not the best solution for business because of the time it takes; businesses need certainty, so far as possible, from the outset.

We said that determining what will be recognised as a 'Qualified' Income Inclusion Rule, Under Tax Payment Rule or Domestic Minimum Top-up Tax will be fundamental for ensuring the coordinated application of the GloBE Rules, and we welcomed the focus in the consultation document on a review process to achieve this. We said that developing this review process should be given the highest priority by the Inclusive Framework going forward to ensure that domestic rules are able to be considered, and their qualified status determined, before they are implemented.

The consultation document considered several possible mechanisms for delivering dispute resolution of the differences in the interpretation or application of the rules that may arise between two or more jurisdictions. Mechanisms considered in the consultation document include multilateral conventions, the use of competent authority agreements under the Convention on Mutual Administrative Assistance in Tax matters (MAAC), reliance on existing treaties, and the creation of a dispute resolution provision in domestic law. Each of these mechanisms have pros and cons, and require further work to develop them and test their viability.

Our full response can be found at: www.tax.org.uk/ref1069

GloBE Information Return

The second consultation published by the OECD was on the proposed GloBE Information Return (GIR). Whilst welcoming the opportunity to comment on the proposals for the GIR scoped out in the consultation document, we noted that the proposed rules represent the work of the OECD Secretariat and that the Inclusive Framework has not reached consensus on them.

We noted that the GIR will establish an enormously complex tax return and that complying with its requirements will be extremely difficult, even for sophisticated businesses. In addition, we said that examining the voluminous information provided will be very challenging, even for sophisticated tax authorities.

We welcomed the principle of a standard form in order to develop a consistent and transparent set of standards for information collection. However, this comes with a significant increase in taxpayer and tax administrations' compliance burdens. We said that in part this is inevitable, as the GloBE rules require consideration of historical and non-tax information on a jurisdictional basis that is not routinely collected by MNEs currently, but also that it will be important for the practicability of the new rules to minimise the burdens to the greatest extent possible.

Accordingly, we encouraged the OECD and the Inclusive Framework in the work going forward to be mindful of practical advice and experience that is received from businesses, trade associations and other groupings, in order to make the GIR more administrable and less burdensome, while continuing to deliver on the overall objectives of the proposals.

Our full response can be found at: www.tax.org.uk/ref1068

Sacha Dalton *sdalton@ciot.org.uk*/