



**Independent Commission for the Reform
of International Corporate Taxation**

2 December 2019

ICRICT response to the OECD Consultation on Global Anti-Base Erosion Proposal (“GloBE”) - Pillar Two

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ICRICT welcomes the opportunity to respond to the OECD’s request for input on the “**Global Anti-Base Erosion Proposal (“GloBE”) - Pillar Two**”.

General comments

As an independent Commission, since the beginning of the BEPS process we have urged governments to move away from the existing transfer pricing system towards a unitary approach to taxation of multinationals (MNEs), based on a system of **multi-factor global formulary apportionment, together with a global minimum tax**.

Allocation of MNEs’ global profits through formulary apportionment supported by a global minimum tax would strengthen the international tax system and drastically reduce the opportunities for base erosion and profit shifting¹.

There is an urgent need to stop the harmful race to the bottom in both corporate tax rates and the artificial shifting of corporate profits to low-tax jurisdictions by putting a floor to tax rates and attributing taxable profits to the jurisdictions where real economic activity takes place.

We therefore welcome the ongoing discussion within the Inclusive Framework to negotiate a global anti-base erosion proposal, where these problems are recognized.

However, we note that Pillar I and Pillar II proposals are moving forward at a very different pace and that the GloBe proposal seems to have less priority than the so-called “Unified Approach” . We thus are concerned that the creation of these new rules may ultimately be implemented only by a limited number of Inclusive Framework members and not followed by much needed global agreement and coordination.

¹ <https://www.icrict.com/international-corporate-taxation-reform>

New rules under Pillar II should complement and reinforce a comprehensive solution under Pillar I, as outlined in our submission earlier this month.²

With this in mind, it is critical that the design of the global anti-base erosion rules is not watered down by pressures from MNEs, some governments and political compromise. It is essential to ensure that: (i) significant new tax revenues are generated by shifting a substantial proportion of the tax base away from low-tax jurisdictions; (ii) opportunities for tax avoidance and gaming of these new rules are minimised; and (iii) both developing countries and developed countries are demonstrably able to benefit effectively from these new rules.

Key design features for an effective GloBe

To be effective, the global anti-base erosion proposal should have the following key features:

- 1) Include a **global minimum tax set at an agreed rate of 25%**.³ We are concerned by the possibility of a much lower minimum effective corporate tax rate becoming the international benchmark which would effectively incentivise and legitimise a “race to the minimum”. Developing countries, which rely relatively more on corporate tax income as a source of government revenues, would be the main losers from such a trend, as would small and medium enterprises in developed countries, which will still pay the full local rate. The minimum rate should over time be raised to narrow the gap with top personal income tax rates, in order mitigate incentives for individuals to falsely incorporate.
- 2) The global minimum tax should be applied on a **country by country basis** and allowing only for **jurisdictional** blending of the tax paid allowing countries to offer incentives for real capacity investment (provided the MNE’s effective tax rate in the country overall exceeds the minimum).
- 3) Exclude **generic carve-outs** for incentive regimes (even for those compliant with the standards of BEPS Action 5 on harmful tax practices, and other substance-based carve-outs) as it is recognised by the OECD Inclusive Framework that these carve-outs “would undermine the policy intent and effectiveness of the proposal⁴”.
- 4) Give **source countries priority** to apply the undertaxed payments rules and subject to tax rules over the application by residence countries of the income inclusion and switch-over rules.⁵

² [https://www.dropbox.com/s/3pb98p1o3qnz3me/oeed-public-comments-secretariat-proposal-unified-approach-november-2019.zip?dl=0&file_subpath=%2FPublished+15+November+2019%2FIndependent+Commission+for+the+Reform+of+International+Corporate+taxation+\(ICRICT\).pdf](https://www.dropbox.com/s/3pb98p1o3qnz3me/oeed-public-comments-secretariat-proposal-unified-approach-november-2019.zip?dl=0&file_subpath=%2FPublished+15+November+2019%2FIndependent+Commission+for+the+Reform+of+International+Corporate+taxation+(ICRICT).pdf)

³ This is just under the current GDP-weighted mean of the statutory rate in OECD countries (26 percent in 2018), but considerably lower than the developing countries mean.
<https://taxfoundation.org/corporate-tax-rates-around-world-2018>

⁴ <https://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.pdf> page 29

⁵ The “ordering rule” will determine who gets to benefit from this proposal, as the majority of large multinationals are headquartered in OECD countries. <https://unctad.org/en/PublicationChapters/diae2018d4a4.pdf> page 44

- 5) Be **supported** by a robust quantitative estimate of the change in distribution between jurisdictions of the taxable base, and of the consequent tax income, arising from the alternative proposals under discussion.

We urge the OECD secretariat (and other international institutions such as the International Monetary Fund) to publish the economic impact analysis of the GloBe (and of the “Unified Approach”) before the Inclusive Framework meeting in January 2020, along with the full data from MNEs’ country-by-country reporting. Without this, the 134 members cannot fully evaluate whether it is in their interests to sign up to this reform. Publishing this information is also essential for countries’ legislators and their citizens to understand the impact of the proposal.

Concluding remarks

The fast pace of the reform process and the OECD pressure to reach a consensus in the coming months means that the risk of unsatisfactory solutions is high.

As corporate tax avoidance by MNEs continues unmitigated under the current system, the failure to deliver comprehensive and fair solutions will increase the fiscal incentive for some countries to introduce unilateral measures, under the pressure of understandably deepening public anger on the issue and the need for revenues.

Any reform that does not significantly increase global tax revenues from MNEs does not adequately address these concerns about tax avoidance; this will further undermine the public trust in the international tax system, which is harmful to both MNEs and governments.

We await with interest the outcome of the ongoing negotiations and will continue to engage with the OECD Secretariat and the Inclusive Framework, but as a Commission we do not regard the likely outcome in 2020 as an end point. Rather we see it as the first step towards creating a genuinely fair international tax architecture, which will require multilateral discussions extending well beyond the current process.