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Organisation for Economic Co-operation and Development
Centre for Tax Policy and Administration
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Re: Comment Letter on the Public Consultation Document: Pillar Two - GloBE Information Return

The National Foreign Trade Council (the “NFTC”) is pleased to provide written comments on the Public Consultation Document on Pillar Two - GloBE Information Return published on December 20, 2022 (the “Consultation Document”).

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members value the work of the OECD and the Inclusive Framework in establishing and maintaining international tax and transfer pricing norms that provide certainty to enterprises conducting cross-border operations. A list of the companies comprising the NFTC Board of Directors is attached as an Appendix.

General Comments

NFTC supports the need for standardization, ease of administration and transparency on the GloBE Information Return (“GIR”). These goals must be tempered to find the appropriate balance between requiring MNEs to file sufficient information to allow tax authorities to assess the correctness of tax liabilities under GloBE while not imposing a significant compliance burden on the MNEs and protecting sensitive information. To that end, we provide comments to simplify the return and help streamline the review process.

Specific Comments

Simplification

The GloBE rules, which govern the preparation of the GIR, contain several elections. NFTC suggests that once an MNE makes an election (e.g., an election to use stock-based compensation tax expense), only the elected data should be reported in GIR. Additionally, the level of details required to be reported in the Corporate Structure segment is significant and unnecessarily burdensome. There is rarely a legitimate need to report such detailed information; and therefore, the return should be simplified and reduced only to the data points strictly required to ascertain tax liabilities under GloBE. Providing extraneous information provides a data overload as well as an increased risk of inadvertent disclosure.

Deference should be given to ordering the applicable rules (e.g., QDMTT, IIR, and UTPR) in determining whether a return filing is required in any jurisdiction. For example, if a QDMTT is applicable to an entity,

no return information for such QDMTT jurisdiction should be required for a jurisdiction with an IIR or UTPR. Similarly, no UTPR jurisdiction should require a filing if an QIIR is applicable to an entity. To the extent any minimal filing information is required, it should simply be a short form showing that the entities in a given jurisdiction are not subject to a jurisdiction's IIR or UTPR.

Additionally, while we are reviewing the recent guidance allocating U.S. Global Intangible Low Taxed Income tax (GILTI) to the constituent entities whose net GILTI tax liability gives rise to the tax, our initial impression is that the guidance is logical and is helpful in providing taxpayer certainty. NFTC believes that GILTI should be taken into account for purposes of the subject to tax rule, as well as for purposes of the GloBE rules. To ensure consistency between taxpayers, the GILTI tax amount to be taken into account should be the current cash tax amount for the year in question.

To the extent applicable, segmentation should be used to ensure only the necessary information regarding a group's activities outside of a jurisdiction is provided. For example, where a jurisdiction is subject to a QDMTT or a safe harbor, the QIIR or UTPR jurisdictions should only receive a confirmation from the taxpayer that the jurisdiction is not subject to such QIIR or UTPR. Similarly, UTPR jurisdictions should only receive the information necessary to determine whether a UTPR should be levied because the income is not subject to either an IIR or QDMTT. It is imperative that confidential corporate information be limited to Tax Administrations that actually require the information to ensure proper computation of a tax liability. Sharing superfluous information may lead to competitive disadvantages, unauthorized disclosure of information and a lack of trust in the system. NFTC strongly encourages the OECD to limit information reporting solely to the tax authority where the MNE files their GIR, allowing other countries to request additional information only as needed by a legitimate tax administrative requirement. This would also help ease the administrative burden in places where the information is not needed due to the entity already complying with Pillar Two in its home jurisdiction.

Certainty for GIR Implementation

As GloBE is levied on a jurisdictional basis rather than a legal entity basis, separate legal entity calculations should not be required. Furthermore, the calculation of jurisdictional GloBE income based on legal entity financial statements should be reviewed upon an audit. Requiring separate Corporate Entity calculations is unnecessary for determining the GloBE liability of a jurisdiction.

For jurisdictions with QDMTTs, no separate GloBE information return should be required, and instead, existing corporate income tax returns should have a section for determining the GloBE income or loss in a jurisdiction. This information should only be required on one form if there are multiple legal entities filing in a jurisdiction.

The OECD intends to implement the GloBE rules as a common approach, i.e., there is no obligation on the members of the OECD Inclusive Framework to adopt them. However, this approach should not apply to GIR. Once a specific jurisdiction decides to adopt GloBE, it must be bound to follow the data and format, including the filing format, of the GIR agreed to as a result of the public consultation and subsequent work by the TDFE. Without requiring adherence to one GIR, it will create an enormous compliance burden, increase uncertainty, and undermine the goals of Pillar Two.

Section 2.2

The OECD should consider modifying the return formats to align with each relevant tax (QDMTT, QIIR and UTPR). Aligning the returns with the relevant tax will limit the information collected to the relevant information for each calculation. Thus, for a QIIR return, group information should be provided for the UPE, the entities in the jurisdiction imposing the QIIR (if different from the UPE), and the subsidiaries/ jurisdictions subject to the QIIR below the jurisdiction imposing the QIIR. Whereas, for the UTPR returns, only the jurisdictions/entities subject to a UTPR should be reported.

Section 3 - ETR and Top-up Tax Computation

NFTC urges that the jurisdictional safe harbor based on CBCr data should be extended permanently (either at the current rate or a lower rate to align with the Pillar Two rate). This would eliminate the need to report every group's detailed calculation for each entity in each jurisdiction in which it operates. Therefore, tax authorities and taxpayers save significant time and effort in preparing and reviewing GloBE calculations for entities, which are unlikely to have a Pillar Two top-up tax liability. The policy intent of reducing the compliance burden on MNEs should not be time limited, and the CBCr safe harbor provides an exclusion from significant compliance for jurisdictions that are highly unlikely to have a top-up tax.

Additionally, uncertain tax positions in a current year should not be required to be reported unless they are otherwise required in a UPE's financial statements. The tax expense reported in section 3.3.1.2. (a) should be permitted to be reported net of UTPs rather than requiring separate disclosure of UTPs (either item-by-item or in the aggregate). Requiring any additional disclosure of UTPs would be contrary and detrimental to financial accounting policies designed to encourage recognition of tax exposures and tax authority policies and practices concerning tax accruals for financial statement purposes (e.g., the U.S. Internal Revenue Service's "policy of restraint" concerning tax accrual workpapers). Doing so could also lead to jurisdictions requesting information not relevant to the Pillar Two calculation. The disclosure requirements for GloBE returns should be narrowly tailored for Pillar Two purposes without mandating that extraneous information be disclosed.

Conclusion

NFTC appreciates the opportunity to provide comments on the Consultation Document. As discussed, we support a standardized GIR to minimize compliance burdens and allow for ease of administration while protecting taxpayer data. We look forward to continuing the dialogue as additional guidance is provided and the GIR return is finalized.

Sincerely,



Anne R. Gordon
Vice President, International Tax Policy

Appendix to NFTC Comments on Pillar Two - GloBE Information Return

NFTC Board Member Companies

Accenture	Mars Incorporated
Amazon	Mayer Brown LLP
American International Group	McCormick & Company, Inc.
Amgen	Meta Platforms
Anheuser-Busch	Microsoft Corporation
Applied Materials	Mondelēz International, Inc.
BP America Inc.	National Foreign Trade Council
Caterpillar Inc.	Oracle Corporation
Chevron Corporation	Organon
Cisco Systems, Inc.	Pernod Ricard USA
Coca-Cola Company (The)	Pfizer International Incorporated
Corning Incorporated	Philips North America LLC
Dentons US LLP	Pitney Bowes
DHL Express (USA) Inc.	PricewaterhouseCoopers LLP
eBay Inc.	Procter & Gamble Company
Ernst & Young LLP	Qualcomm Incorporated
ExxonMobil Corporation	Raytheon Technologies
FedEx Express	Samsung Electronics
Fluor Corporation	Schneider Electric
Ford Motor Company	Siemens Corporation
General Electric Company	Siemens Energy, Inc.
Gilead Sciences, Inc.	Stellantis NV
Google Inc.	TE Connectivity
Halliburton Company	Texas Instruments
Hanesbrands Inc.	TotalEnergies
Hewlett Packard Enterprise Company	Toyota Motor North America
HP Inc.	UPS
IBM Corporation	Visa Inc.
Johnson Controls	Walmart
KPMG LLP	