

OECD announces Pillar Two GloBE information return consultation

22 December 2022

In brief

On the one-year anniversary of issuing the Pillar Two Model Rules, 20 December 2022, the OECD released four guidance documents related to Pillars One and Two:

- Pillar Two [Guidance on Safe Harbors and Penalty Relief](#) (see [tax policy alert](#));
- Pillar Two public consultation document on [Tax Certainty for the GloBE Rules](#) (comments due 3 February) (see [tax policy alert](#));
- Pillar Two public consultation document on the [GloBE Information Return](#) (comments due 3 February); and
- Pillar One public consultation document on the [Draft Multilateral Convention \(MLC\) Provisions on Digital Services Taxes \(DSTs\) and other Relevant Similar Measures](#) (comments due 20 January) (see [tax policy alert](#)).

All of these documents are OECD Secretariat [consultation documents](#) (and, thus, unagreed) except for the guidance on Pillar Two Safe Harbours and Penalty Relief, which was approved by the Inclusive Framework (IF) on 15 December.

This tax policy alert considers the public consultation document on the GloBE information return.

In detail

Overview

GloBE Information Return

The [GloBE Model Rules](#) (see prior [Tax Policy Alert](#)) require MNE groups to file a standardised GloBE information return (GIR) in each relevant jurisdiction that has introduced the GloBE rules. The public consultation document on the GIR indicates that the ultimate objective of the GIR is to develop a consistent and transparent set of standards for information collection that preserves consistency and certainty of outcomes for MNE groups, while avoiding a significant increase in taxpayer and tax administrations' compliance burdens.

The GIR information requests centre around groups of data points, and these are presented in Annex A of the GIR. These include:

1. Identification of the constituent entities and their location
2. The overall corporate legal entity structure of the MNE group
3. Information necessary to compute the effective tax rate (ETR) for each jurisdiction (including both jurisdictional-level data as well as legal entity-level data)
4. The top-up tax for each constituent entity and members of a JV group
5. The allocation of the top-up tax amount to the IIR and UTPR
6. Record of any elections made.

Note that the information outlined in Annex A should not be viewed as the final GloBE tax return. Instead, the consultation document provides that:

“Annex A represents the best efforts of the Inclusive Framework to identify all the data points of the MNE Group that it may need to collect in order to calculate its GloBE tax liability. Organising these data points into tables is intended to facilitate a common understanding of each data point as well as the relationship between them and their connection to the underlying GloBE calculation mechanics, however it does not necessarily represent the final form of the GIR. The collection of these data points, and their organisation in line with the GloBE calculation mechanics, constitutes the first step in the process of developing common information filing and exchange requirements.”

Observation: The GIR will undoubtedly result in the need for significantly increased data collection and information sharing, as the GloBE rules require consideration of historical and non-tax information on a jurisdictional basis. It is also noteworthy that the obligation to prepare the GIR is separate from any local tax return requirements. Implementing jurisdictions will in many cases also amend the local corporate income tax return to request additional GloBE information pertinent to that jurisdiction, and MNE Groups will need to comply separately with these local requirements.

While all of the data points requested will require further analysis by stakeholders, we include some initial observations on three particular aspects: the corporate legal entity structure; the information necessary to compute the ETR for each relevant jurisdiction; and, whether the GIR is a first filing or an amended return.

Corporate legal entity structure

As outlined above, the GIR would require disclosure of the entire corporate legal entity structure of the MNE group. This extends to constituent entity-level information with respect to *any* ownership changes within the year (e.g., the merger of two constituent entities).

Observation: GIR reporting requirements will require annual monitoring of any MNE group changes, including, but not limited to group reorganisations, share transfers, contributions, redemptions, acquisitions, divestitures, legal entity formations, etc. Not only will this information need to be monitored and maintained, but it also will need to be synthesised and compiled into the GIR. Considering existing disclosure requirements, this process is likely not standard procedure within tax departments today and will require additional efforts and new processes.

Information necessary to compute the ETR for each jurisdiction

In addition to ownership changes, the GIR also requires extremely detailed information on a constituent entity basis for purposes of determining GloBE income or loss and adjusted covered taxes.

Annex A requires tracking all potential positive and negative adjustments to GloBE income or loss (e.g., excluded dividends, accrued pension expense, arm's length adjustments, etc.). This information is then aggregated on a per-country basis.

Similarly, Annex A requires disclosure of all positive and negative adjustments to current covered taxes (e.g., covered taxes for uncertain tax positions, post-filing adjustments, etc.) and deferred taxes (e.g., tax on items excluded from GloBE income or loss, disallowed accruals, etc.).

Observation: Some businesses have already started talking about how the GIR will require the collection of tens of thousands of additional data points. Looking at the constituent entity-level reporting required under just Section 3.4.1(a) (in Annex A1) for financial accounts net income and loss (FANIL), where, in respect of each entity, up to 24 different items (both additions and reductions) must be reported, that number does not seem fanciful. The volume of data raises significant questions with respect to the compliance burden on taxpayers as well as the extent to which tax authorities will be able to analyse the data in a meaningful fashion as part of the examination process.

The covered taxes disclosures are particularly complex with respect to tracking deferred tax liabilities that are not paid within five years and are therefore subject to the 'recapture mechanism' and deferred tax liabilities that are subject to modification to account for the transition rules in Article 9.1.1 - 9.1.3 of the GloBE Model Rules.

Observation: The approach by which tax administrations will seek supporting information that ties to and generates the GIR Annex A data will be a key issue to be resolved in the medium term. We note that the [guidance on safe harbours](#) provides for relief from penalties and sanctions for mistakes made by MNE groups in applying the rules during the transition period, but this is only a temporary measure.

First filing or amended return

Section 1.1.4 of the GIR form asks whether the filed return is an amended return. Article 4.6.1 of the Model Rules provides that in the case of a decrease in covered taxes included in the constituent entity's adjusted covered taxes for a previous fiscal year, the ETR and top-up tax for such fiscal year must be recalculated under Article 5.4.1. Thus, the adjusted covered taxes for the respective constituent entity must be reduced in line with such decrease and reported on an amended return.

***Observation:** The global tax environment is dynamic. Likewise, the GIR will not be static. With increasing tax controversy, decreases in adjusted covered taxes will be commonplace as such disputes are resolved. Consequently, an MNE group will need to develop a process that (1) tracks decreases in covered taxes previously recorded and (2) systematises the re-calculation and re-population of the GIR for the respective prior year.*

Time limits for filing the GIR

The Model Rules provide that the GIR must be filed within 15 months of the end of the GloBE reporting year (extended to 18 months in the first fiscal year that the MNE group is within scope).

Public consultation process

As outlined above, the public consultation document on the GIR seeks input on the amount and type of information that MNE groups should be expected to collect, retain, and report for the application of the GloBE rules and possible simplifications or safe harbours that could be incorporated in the GIR, as well as the ability of the MNE

group to provide alternative data points. Interested parties are invited to send their comments on this consultation document no later than 3 February 2023.

Observation: This GIR has been largely prepared by government officials without significant input from business. This public consultation on the GIR provides the best – and perhaps only – opportunity for businesses to give their views on what is feasible, what is infeasible, and how the outcomes governments want could be more simply achieved. As noted above, the GIR will result in the need for greatly increased data collection and information sharing, so businesses should take this opportunity to feed their practical experience into this process.

The takeaway

The GIR would establish an enormously complex tax return. Complying with its requirements will be extremely difficult, even for sophisticated businesses, and examining the voluminous information provided will likewise be very challenging, even for sophisticated tax authorities. It is clear that tax administrations have tried to include “*all the data points of the MNE Group that it [the MNE Group] may need in order to calculate its GloBE tax liability.*” However, that means that the resulting document will not, in any way, ease taxpayer concerns around data collection and reporting burdens. Accordingly, it is critically important that businesses, individually and through trade associations and other groupings, feed in as much practical advice and experience as possible, in an effort to make the GIR more administrable and less burdensome.

Let's talk

For a deeper discussion of how the proposals made in the consultation documents on the GloBE information return might affect your business, please contact:

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