11 April 2022

To: International Co-operation and Tax Administration Division
Organisation for Economic Cooperation and Development
Centre for Tax Policy and Administration
2 rue André-Pascal
75775, Paris, Cedex 16, France
Submitted by email: taxpublicconsultation@oecd.org

Re: **OECD's Public Consultation on the GloBE Implementation Framework**

Dear Secretariat Team,

PwC International Ltd on behalf of its network of member firms (PwC) welcomes the opportunity to share its views on what should be covered in the Implementation Framework of the global minimum tax under Pillar Two (GloBE) of the project Addressing Tax Challenges of the Digitalization of the Economy. In view of our understanding of the nature and urgency of the request, as well as the limited turnaround, we set out below a brief summary of the issues which we believe the Inclusive Framework could address as part of its program of work. We would be happy to elaborate on these further or to discuss other matters related to the development of the GloBE Implementation Framework.

We support the Inclusive Framework's stated priorities in developing a GloBE Implementation Framework that is efficient for taxpayers and tax administrations and preserves consistent and coordinated outcomes for MNEs that avoid the risk of double taxation. We also support the development of mechanisms that will ensure tax administrations and MNEs can implement and apply the GloBE Rules in a consistent and coordinated manner while minimising compliance costs. In that light, we offer several comments and responses to your suggested questions on issues that should be addressed as part of the development of the GloBE Implementation Framework in an Appendix, with a summary of general points outlined below:

- The GloBE Implementation Framework should eliminate administrative burden wherever possible;
- The development of simple and administrable safe harbours is vital to the administrability of the GloBE Rules;
- The GloBE Implementation Framework should ensure that avoiding double taxation is accorded the same degree of emphasis that is accorded to providing for the robust operation of the GloBE Rules;
- The GloBE Implementation Framework should specify a robust dispute resolution framework to ensure tax certainty is achieved for both taxpayers and tax administrations; and
- Commentary and administrative guidance should be developed on a rolling basis throughout the initial years of implementation.

With this letter we kindly invite you to take our observations into consideration during the development of the GloBE Implementation Framework. We stand ready to discuss the issues raised in this letter in more detail, if that would be helpful at any point - please do not hesitate to contact me or one of the individuals set out below.

Yours sincerely,

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Appendix

We group our comments under the relevant questions suggested in the public consultation document:

1. **Do you see a need for further administrative guidance as part of the Implementation Framework? If so, please specify the issues that require attention and include any suggestions for the type of administrative guidance needed.**

Art 1 par 37.a	**Application of GloBE rules where a UPE is an excluded entity.** The Commentary confirms that where a UPE is an Excluded Entity, the IIR should be applied by the next Entity in the ownership chain. The revenue of the Excluded Entity is however still taken into account for the purpose of the revenue threshold as stated in Article 1, paragraph 37.b of the Commentary. Certain pension funds and sovereign investment funds that qualify as Excluded Entities on the basis of Article 1.5.1. of the Model Rules consolidate some of their investments. These investments are segregated operational companies/groups that do not interact with each other at all. The consolidation causes all these operational companies to be considered Constituent Entities of the overarching MNE group headed by the Excluded Entity UPE. Article 5, paragraph 4 of the Model Rules confirms that when a Parent Entity that applies the IIR is not the UPE (e.g. because this obligation is applied at the level of that Parent Entity, where the UPE itself is an Excluded Entity as explained in Article 1, paragraph 37.a of the Commentary), the ETR of a jurisdiction is not computed solely by reference to the Constituent Entities owned by that Parent Entity. Rather, the ETR is

	computed by reference to all the Constituent Entities of the MNE Group headed by the Excluded Entity UPE. Clarification is welcomed in relation to the computation of the ETR and allocation of top-up tax for groups headed by an Excluded Entity UPE as legally the segregated operational investee groups may generally not exchange business sensitive information and it would create an excessive compliance obligations for the Excluded Entity MNE and the segregated groups to perform such exercise. These fact patterns do not present a risk of tax avoidance, as the operational groups would already be subject to the GloBE rules in their own right.
Art 3.2.1, Commentary pg 54, par 57	**Excluded Equity Gains and Losses**. The OECD Commentary (pg. 54, paragraph 57) states that as part of the administrative guidance, the OECD will consider whether Excluded Equity Gains and Losses (i.e., gains & losses on non-portfolio shareholdings) should include gains and losses from FX hedging of ownership interests in other constituent entities. Administrative guidance would be helpful in this area. Many MNEs use derivatives to hedge FX exposure on group shareholdings. Since FX gains or losses on dispositions of such shareholdings would be excluded from GloBE Income (as Excluded Equity Gains and Losses), MNEs strongly believe that FX gains and losses on these hedging instruments should likewise be excluded from GloBE Income. MNEs are concerned that a different treatment would impair the effectiveness of these hedging arrangements.
Art 3.2.3 Par 105	The Model Rules and Commentary provide confusing and seemingly inconsistent guidance with respect to the application of the Arm's Length Principle. Unless clarified, these provisions are likely to be applied inconsistently by jurisdictions, leading to disputes and double taxation. For example, Paragraph 105 of the Commentary refers to the Implementation Framework for further consideration on Article 3.2.3. In this respect it seems that paragraph 101 is not fully aligned with paragraph 108. In particular under paragraph 101 an adjustment to the Financial Accounting Net Income or Loss with respect to a related-party transaction amount is required to avoid double taxation or double non taxation under the GloBE rules (and not to protect the jurisdictional blending or the ETR calculation from distortion) while paragraph 108 refers to the arm's length principle as relevant to avoid distortions on the ETR calculation (and not specifically to avoid double taxation or double non taxation under the GloBE rules). Additionally in paragraph 101 it is not clear the meaning of the following statement: "unless the transfer pricing adjustment increases or decreases the MNE Group's taxable income in a jurisdiction that has a nominal tax rate below the Minimum Rate or that was a Low-Tax Jurisdiction with respect to the MNE Group in each of the two Fiscal Years preceding the unilateral transfer pricing adjustment (an under-taxed jurisdiction)". In particular it seems that, under certain conditions (i.e. to avoid double taxation or double non taxation under the GloBE rules) a corresponding adjustment is required under Article 3.2.3 for all counterparties (but not in the case - "unless" - provided by the above statement). Additional administrative guidance is required in this respect. Consideration should also be given to building in a safeguard mechanism to mitigate the risk of unfounded transfer pricing adjustments. Additional thought and guidance should be provided with respect to the interaction of the provisions of Article 3.2.3 -- as elaborated on in the Commentary and Examples -- with those of Article 4.6.1 since these may create complex, unintended and burdensome consequences for certain taxpayers. In particular because such potential consequences would not be aligned with the policy objectives of Pillar Two.
Art 3.2.7	Further clarification is required regarding the operation of Article 3.2.7 and intra group financing arrangements. This provision is very broadly drafted and could impact wholly commercial financing arrangements. The

	Commentary with respect to intragroup financing arrangements refers variously to transactions that are "intended" to affect the tax result; to the definition of an arrangement is "to be inferred" from the transactions undertaken; and to a defining an arrangement based on whether "an objective observer would reasonably conclude" that an arrangement exists. This language is certain to lead to disputes and double taxation and should be narrowed or eliminated.
Art 3.2.8	Article 3.2.8 deals with a local tax consolidation for GloBE Income or Loss computation purposes. Local tax consolidation is not dealt with under Chapter 4 for the identification and calculation of Adjusted Covered Taxes. We consider it necessary to provide administrative guidance with respect to the notion of Covered taxes in the context of a local tax consolidation. In particular, assuming all Constituent Entities (CEs) participating in the local tax consolidation have local taxable income only one CE could pay the local taxes (while other CEs provide funding to the paying CE). When some CEs are in a local tax loss position and others in a local tax profit position the set-off between income and losses could cause any current or deferred tax to disappear. This could have a distortive effect in the case where a CE with a local tax profit position does not account for current tax expenses but does account for the funding amount in lieu of the local current tax expenses.
Art 3.3 International Shipping Exclusion	First, due to the global and mobile nature of the international shipping industry the connection between the place of strategic or commercial management decisions compared to the location of international shipping income needs further clarification. In particular, if the policy intention is to broadly exclude true international shipping, in line with Article 8 of the OECD Model Tax Convention, then linking the exception to taxation in a particular jurisdiction does not seem consistent with that.
Art 4.3.1 par (a)	Article 4.3.1 paragraph (a) governs the allocation of Covered taxes to a permanent establishment (PE). The Commentary illustrates 3 steps. Under step 2 the following statement on how to quantify the Covered Taxes due in the Main Entity's jurisdiction that are to be allocated to the PE jurisdiction when the "PE income" is mixed with "other income" can be found: "domestic losses and losses of other PEs allowed in the Main Entity's allocable income computation under the credit method are first used against domestic income and then applied to PE income inclusions." Under certain circumstances (e.g. the PE is located in a low tax jurisdiction or in a no CIT jurisdiction) the credit method will produce the full taxation of the PE income in the Main Entity's jurisdiction. This creates a timing issue where a final Top-up Tax could emerge for the PE in Year 1 (in Year 1 the PE income is offset with the PE income and in Year 2 the Main Entity will pay local taxes on "other income" that are economically related to the PE income of FY 1). We believe that administrative guidance must be provided to avoid double taxation in these and similar fact patterns.
Art 4.5	**GloBE Loss Election.** Article 4.5.1 states that the GloBE Loss Election may be made for "a jurisdiction". Article 5.1.1 states that each Stateless Constituent Entity is treated as a single Constituent Entity located in a separate jurisdiction (for purposes of computing the ETR and top-up tax of that entity). Can the GloBE Loss Elections be made for a Stateless Constituent Entity? We note that if a Stateless Constituent Entity cannot make this election, there would typically be no way to deal with timing differences in the ETR calculation for such an entity (e.g., a GloBE Loss in one year and GloBE Income in another year), very likely resulting in an inappropriate imposition of tax under the GloBE rules This is because the deferred tax adjustment rules in Article 4.4 are generally available for an entity only if deferred tax expense is recorded in that entity's financial statements. A Stateless Constituent Entity

	that is not subject to income tax in any country would generally not have deferred tax expense for financial accounting purposes.
Art 4.4.1	**Deferred Tax Adjustments.** As written, Model Rule 4.4.1 recasts deferred tax expenses at the Minimum Rate of 15% for GloBE purposes. The result of this recast is that an entity meeting the Minimum Rate under financial accounting principles will have a top-up tax due under certain circumstances which are seemingly not aligned with the underlying policy. While we acknowledge this may be a settled policy issue, we believe that the recast of the deferred tax expense should be eliminated from the GloBE rules due to this unintended result. Alternatively the rules should provide for a smoothing mechanism that would allow for the top-up tax paid in Year 1 to be refunded
Art 4.4.2 Non-refundable credits	The GloBE rules penalize jurisdictions that provide incentives via non-refundable tax credits. As governments in sovereign jurisdictions grant credits to taxpayers to advance a particular policy or purpose, the GloBE rules should not penalize taxpayers because a credit is granted in a non-refundable manner. Credits similar in nature should be treated equivalently under the GloBE rules regardless of whether they are refundable or nonrefundable.
Art 6	**Business combinations and intra-group mergers in jurisdictions that tax Equity Gains** In jurisdictions that tax Equity Gains in the hands of the seller, the tax basis of the acquired Ownership Interests in the hands of the buyer is registered at fair market value. The excess of acquisition price over the equity value in the target is registered as asset surplus and/or goodwill. In the case of a later intra-group merger between buyer and target, the asset surplus originally paid to (and taxed by) the third-party seller is added to the historical carrying value of the assets in the disposing entity. This increase in the carrying value of the assets does not trigger further taxation, as it was already taxed in the hands of the seller. <u>Issue:</u> The above described intra-group merger does not qualify as a GloBE Reorganisation, as it results in an increase in the tax carrying value of the assets. Therefore, the transaction could be seen to trigger the application of Article 6.3.1, including in the GloBE base income that had been previously taxed in the hands of the seller – leading to a potential for double taxation. <u>Recommendation:</u> It is consistent that GloBE denies asset carrying value increases as a consequence of the acquisition of Ownership Interests (paragraph 17, Ch. 6, Commentary), since Equity Gains are treated as a permanent difference and excluded from GloBE (Article 3.2.1(c)). However, this consistency would not hold in the case of domestic legislations that require Equity Gains to be taxed in the hands of the seller. For those cases, it should be clarified that the tax base increase is accepted for GloBE purposes. This could be achieved, for instance, by clarifying that the scope of Article 6.2.2. may include the acquisition of Ownership Interests, provided a Covered Tax is levied on the seller based on the difference of its tax basis in the Ownership Interest and the consideration paid in exchange.
Art 6.4	**Joint Venture Treatment.** There is discrimination against Joint Ventures through requirement to consider separately from other jurisdictional entities. We would recommend that an election should be available to taxpayers to treat a MNE's share of JV income and taxes as a part of the jurisdictional income and taxes. The result will be to no longer treat the JV as a standalone group, but rather along with other of the MNE entities in the same jurisdiction.
Art 9.1.2	**Transition Period**. The transitional period rules are cumbersome to apply and track for MNEs. Further, when the Model Rules were drafted, the envisaged date of effectiveness was January 1, 2023. Now the envisaged

	effective date is at least one year beyond that, January 1, 2024. It is recommended that the transitional period should be revised to be the twelve months prior to the Pillar Two effective date. As it stands the transition period is much longer than intended at the time of drafting.
Art 9.1.3	It appears that the intention of Article 9.1.3 is, in the case of an intra group transfer within the transitional period, to limit the transferee's basis in the asset (for the purposes of calculating the depreciation to be taken into account at arriving at the GloBE income) to the transferor's historic carrying value. It is then necessary to calculate the deferred tax asset (if any) for the transferee. It appears from the words of Article 9.1.3 that the deferred tax asset should be calculated based on the difference between the local tax value in the transferee (fair market value say in the case of a transfer at fair market value) and the transferor's historic carrying value (being the transferee's GloBE basis in the asset as per the above) at 15% (assuming a local statutory rate higher than the minimum rate) rather than somehow limiting the deferred tax asset in the transferee to the value of any deferred tax asset in the transferor. However the position is not entirely free from doubt and the Commentary is relatively silent on the matter. Given the significant implications for the calculation of Covered Taxes (and therefore GloBE ETR) going forward it would be helpful if the position was confirmed as part of the work on the Implementation Framework.
Art 10.1	**Definition of 'Consolidated Financial Statements'.** Clarification on paragraph (d) of the definition of "Consolidated Financial Statements" is highly appreciated. The Commentary makes limited reference to subpart (d) of the definition of Consolidated Financial Statements in the Model Rules. This subpart (d) could be read as requiring an Ultimate Parent Entity which does not prepare financial statements and is not required to do so by Authorised Financial Accounting Standards, to perform a deeming exercise under which it needs to prepare consolidated financial statements in accordance with an Authorised Financial Accounting standard, which would then be used to determine the impact of the GloBE rules.
Art 10.1	**Definition of 'Permanent Establishment'.** The GloBE definition of "Permanent Establishment" is silent on other scenarios of permanent establishments that may arise, leading to confusion in application. It is recommended that the definition of "Permanent Establishment" should be expanded to include the scenario where the Main Entity taxes the income attributable to the PE. The tax paid by the Main Entity should be allocated to the source jurisdiction where the PE is situated. As written, this scenario is absent from the GloBE rules which could lead to confusion for taxpayers and inconsistent application.
Art 10.2 & 10.3	**Tiers of Flow-through Entities.** Article 10.2.1 classifies a Flow-through Entity as either a Tax Transparent Entity or a Reverse Hybrid, to the extent that the entity is fiscally transparent in the jurisdiction where its owner is located. It's not clear how this test can be applied where a Flow-through Entity is owned by another Flow-through Entity (is it a Tax Transparent Entity or a Reverse Hybrid?). There is a case for going back to some of the tiering definitions of the 2020 Blueprint.
Pillar Two seems to assume IFRS as standard	While certain accounting standards may require that a separate company financial statement of an entity (otherwise included in a consolidated financial statement) should reflect financial statement bases of assets acquired from intra-group transactions at the acquisition price / fair market value (e.g., IFRS), other standards may not. As an example, for separate company financial statements under US GAAP, certain transfers of assets (e.g., intangibles) between entities under common control (or between a parent and its subsidiary) are generally reflected on the acquirer's financial statements at

	the historical book carrying value of the assets transferred.
General	We think it is necessary for the Implementation Framework to clarify the procedures for developing a list of jurisdictions implementing a Qualified IIR, Qualified UTPR, QDMTT, Qualified Refundable Tax Credit, and Qualified Imputation system.
FX fluctuation	It may be necessary to implement measures to mitigate the impact of significant FX fluctuation within a fiscal year. For example, in the case of an MNE with group revenue in excess of EUR 750 million, one option may be to use an average FX rate for a certain period.

2. **Do you have any comments relating to filing, information collection including reporting systems and record keeping? In particular do you have any views on how the design of the information collection, filing obligations and record keeping requirements under GloBE could be designed to maximise efficiency, accuracy and verifiability of information reporting while taking into account compliance costs?**

It would be helpful to receive further clarity as to under which circumstances an amended tax return would be required and under which circumstances it would not, taking into account the scope of Article 4.6.1, as well as the feasibility and scope of the request of downward assessment of the Top-up Tax. Also attention needs to be paid in this context to Article 5.4.1.

3. **Do you have any suggestions on measures to reduce compliance costs for MNEs including through simplifications and the use of safe-harbours?**

In their current form, the Model Rules are far too complex and uncertain in key aspects of their interpretation to be implemented and administered consistently by jurisdictions. The Rules will also impose enormous costs on both taxpayers and tax administrators attempting to apply the full scope of them to a taxpayer's global operations, notwithstanding that, in most common fact patterns, taxpayers and tax administrators would readily agree that rigorous application of the rules is unnecessary. Accordingly, development and publication of appropriate Safe Harbours must be treated as an urgent priority as MNEs and tax administrations undertake the work necessary to build financial systems to comply with the rules. Failure to make this a priority risks the long-term success of the entire undertaking, despite the significant costs that taxpayers will need to incur in preparation for the implementation of the rules.

As requested, the following are proposed GloBE Safe Harbour methodologies:

- A specific "white list" (or "general administrative guidance") of jurisdictions that have a headline statutory rate of at least 15% and do not offer any harmful tax incentives as defined by the OECD. We would further note that any tax incentives that are designed to incite positive economic or social policies should be excluded from the definition of a harmful tax incentive. For example, incentives tied to headcount/employment, research and development, creation of new technologies, "green" or environmental incentives, etc.
- Jurisdictions that have a headline statutory rate of at least [15%] and the effective tax rate for accrued income taxes of such jurisdiction in an MNE's CbCR is at least [15%].

If QDMTT is introduced in a jurisdiction, a safe-harbour ought to be applicable.

Constituent Entity and Permanent Establishment Definitions. GloBE definitions of "constituent entity" and "permanent establishment" depart from the well-established and relied upon definitions under CbCR rules. Requiring taxpayers to analyse and report on the concepts under the new GloBE definitions adds unnecessary complexity. We recommend that the OECD adopt the CbCR definitions of "constituent entity" and "permanent establishment" in the GloBE rules. CbCR reporting rules have been followed by taxpayers in preparing submissions since 2016. By introducing new definitions for these established concepts in the GloBE rules, the OECD is introducing unwarranted complexity and additional work for taxpayers to both redefine their groups and perform additional calculations that meet the new definitions.

4. **Do you have views on mechanisms to maximise rule co-ordination, increase tax certainty and avoid the risk of double taxation?**

Further consideration is necessary for the development of a multilateral convention to codify and coordinate jurisdictions' political commitment regarding the common approach. Such a multilateral convention could also contain a mechanism to determine the allocable top up tax and for multilateral dispute resolution (e.g., a mechanism similar to that being developed for Pillar One). Nevertheless, even if such a convention is not possible at this time, the Implementation Framework should specify a robust dispute resolution framework in which there is a process that produces a result that is accepted by all jurisdictions. This will ensure a coherent application of the Model Rules worldwide and potentially facilitate audits and settle disputes between companies and authorities or between authorities.