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## **Public Consultation on compliance and tax certainty aspects of global minimum tax**

Dear Secretariat Team,

economieuisse, the Swiss Business Federation represents approximately 100,000 companies from all business sectors and regions of Switzerland with a collective work force of about 2 million. SwissHoldings represents the interests of 61 Swiss-based multinational enterprises from the manufacturing and service sectors.

Swiss Business appreciate the opportunity to comment on the amount and type of information that MNE Groups should be expected to collect and the various mechanisms for achieving tax certainty under the Global Anti-Base Erosion (GloBE) Rules. We strongly believe that the success of the GloBE rules relies on the ability of businesses to comply with and tax authorities to administer the rules. Unrealistic and overburdensome requirements will severely impede these dual goals of compliance and administrability. Therefore, we strongly believe that legal certainty and coherent application of Pillar Two is essential to enable MNE's full compliance with the rules.

Please find below some remarks on the two public consultation documents:

### **Global Information Return**

1. The level of reliance on financial accounts, the global reach of the rules and the adoption of the common approach have resulted in a suite of rules that are unprecedented in their nature and challenging for both businesses and tax authorities to apply. These challenges cannot be overcome simply through more and more reporting. For example, entity by entity disclosures for most groups will involve tens of thousands of data points, the majority of which will require manual calculation and intervention. **Therefore, adoption of a simple, robust, common reporting mechanism that is capable of being accurately complied with by businesses, and more easily administered (including targeted risk assessment) by tax authorities, represents the best way to make the GloBE rules more manageable for all stakeholders.**

2. A manageable level of compliance and administration for MNEs and tax administrations will be best facilitated by differentiating disclosures in the **GloBE Information Return based on whether a GloBE top up tax liability is relevant**. For many MNEs, a GloBE liability will only be relevant for a very small number of jurisdictions, either because of the operation of a safe harbour or simply because their effective tax rate in that jurisdiction is higher than the minimum rate. Requiring the same level of disclosure across all jurisdictions regardless of whether a GloBE liability is a missed opportunity for significant simplification. Framing disclosures to enable targeting of review and risk assessment activities benefits both MNEs and tax administrations.
3. **Entity by entity disclosures across all jurisdictions** does not seem to be the right granularity whereas, GloBe compliance is judged on a country consolidated basis. Therefore, that should be the relevant level to disclose. With that information tax authorities can judge whether UTPR or QDMTT is applied correctly.
4. **In addition, Entity by entity disclosures across all jurisdictions** regardless of whether there is a GloBE liability **would also pose significant data privacy concerns due to the commercially sensitive nature of the required level of detail across all entities within a group**.
5. A key simplification tool is to ensure that the GloBE Information Return targets disclosures for jurisdictions that have a top up tax liability. A differentiated approach is recommended, whereby **jurisdictions are removed from the scope of detailed reporting requirements if certain conditions are met**.
  - Step 1: The use of effective **permanent safe harbours to eliminate detailed reporting requirements** for low-risk jurisdictions. This **includes jurisdictions that have introduced a local QDMTT**.
  - Step 2: **Identify jurisdictions (that do not qualify for a safe harbour) with an effective tax rate of above 15%** and those jurisdictions with no Jurisdictional Excess Profit. **Reporting and disclosures for these jurisdictions should be completed on a jurisdictional basis only**.
  - Step 3: **Identify any top-up tax that has been calculated and imposed via a qualified IIR**. This will impact the scope and breadth of information exchange.
  - Step 4: **Identify information required for GloBE top-up tax that is imposed via the UTPR**. This information may require disclosure to a wider range of jurisdictions.
6. As stated in the public consultation document **a single point of filing followed by the exchange of GloBE information between tax administrations** was strongly supported in previous public consultations. It remains one of the key concerns of Swiss Business. When the UPE or a Designated Filing Entity files the Global Information Return with the tax administration of the jurisdiction where it is located and there is a Qualifying Competent Authority Agreement in effect to exchange GloBE information, then in accordance with Article 8.1.2 of the GloBE Rules the requirement for each Constituent Entity to file a Global Information Return needs to be removed. The experience with CbCr shows that this could work and at the same time safeguarding confidentiality of the information. **The development of a centralized filing process and appropriate mechanisms to allow tax administrations to automatically exchange GloBE information is of utmost importance to limiting the administrative effort of business as well as the authorities**.

7. **In order to limit the administrative effort Swiss Business further suggests the creation of a central database by the OECD that specifies which country applies a QDMTT, an IIR and/or the UTPR.** Otherwise, each MNE must make such a clarification and monitor all the jurisdictions on individual basis. All jurisdictions should be obliged to rely on this database. OECD can safeguard the accuracy of the database by way of peer reviews.
8. Swiss Business also questions the requirement to disclose explicitly the value of current tax expense related to uncertain tax positions. Even on jurisdictional level (3.3.1.2.h) it is risky, a disclosure for every single constituent entity (3.4.2.2h) would probably create a direct risk of scrutiny. Keeping the current layout of the Information Return could have significant unforeseen consequences which would be against the overarching logic of reporting UTPs.

### **Tax Certainty**

9. **A thorough and effective tax certainty process is an essential part of a balanced implementation for Pillar Two.** Differences in interpretation and implementation of GloBE Rules across jurisdictions bring with it the risk of double taxation and disputes. Therefore, binding dispute prevention and resolution mechanisms are crucial to provide tax certainty for MNE. In the absence of appropriate tax certainty mechanisms, Pillar Two will not be able to achieve its ultimate goal of stabilizing the international tax system.
10. Concerning the legal instrument to ensure tax certainty, **Swiss Business strongly supports a multilateral instrument for Pillar Two.** A solution based on bilateral tax treaties has significant disadvantages. Due to the high number of jurisdictions involved in the Pillar Two project, a large number of bilateral tax treaties would have to be amended, implying long lead-times and continued periods of legal uncertainty for MNE. Until a multilateral solution is available, countries should develop reciprocated domestic provisions allowing for a dispute resolution mechanism in practice.
11. Given rapid progress in domestic implementation in several constituencies, it is concerning that the laid-out propositions for dispute prevention and resolution have remained vague and the process is not bound to a tangible timeline. **The implementation of rules resulting in potential double taxation without the conclusion of a sufficient dispute prevention mechanisms may result in substantial tax uncertainty.**
12. A sensible approach for dispute prevention comes in the form of a safe harbour. Whilst currently the **QDMTT provides the most important safe harbour, unambiguous definitions of the QDMTT are required in the administrative guidance.** This will improve the QDMTT functioning as a safe harbour and ultimately reduce disputes.
13. **It is indispensable to address how updates to the Model Rules, Commentary and administrative guidance will be handled in a coordinated manner.** Such updates sow the risk for different interpretations between jurisdictions referring to differing versions of the framework.
14. A potential conflict arises in cases where a jurisdiction disagrees with the concrete application of a QIIR or QDMTT by another jurisdiction. We suggest, that under such a stance, **MNE are given the assurance that a jurisdiction may not levy a UTPR but instead raise the issue in the peer review process.** In this manner, issues regarding application can be addressed in a coordinated fashion by IF members. Also, we understand that such a stance is supported by the October 2021 Statement, suggesting that **Pillar Two is based on a common approach**

**under which IF members accept the application of the GloBE rules by other IF members.**

Yours faithfully,



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Executive Board Member  
economiesuisse



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