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Submitted by email: taxpublicconsultation@oecd.org

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Ref: Secretariat Global Anti-Base Erosion Proposal ("GloBE") – Pillar Two

Dear Secretariat Team,

Thank you for the opportunity to comment on the Secretariat proposal (the "proposal") on Pillar Two of the project *Addressing The Tax Challenges Of The Digitalization Of The Economy* (the "Project"). As we said in relation to our comments on Pillar One, this Project will fundamentally reshape the international tax rules, and we are glad that stakeholder engagement has been encouraged. Given the scope of the Project, we are also encouraged that you have indicated that this engagement will continue, and look forward to further opportunities to contribute.

We appreciate the efforts (implicit in the questions asked) to make an income inclusion rule as simple as possible – although, realistically, a globally coordinated income inclusion rule will likely never meet the dictionary definition of "simple". Furthermore, we acknowledge that the U.S. enactment of the Global Intangible Low-Taxed Income rules (or "GILTI") put the question of a worldwide income inclusion/ minimum tax rule, squarely on the international agenda. That said, we would make a number of preliminary comments in order to frame our comments in the attached letter:

- First, as a general matter, this proposal cannot be fully evaluated in isolation. The interaction of Pillars One and Two, as well as between the components of Pillar Two, need to be seen together before the effects and implications can be fully understood. Furthermore, the interaction of the income inclusion rule with the undertaxed payments rule **together with** the BEPS Action Items recently, or in the process of being implemented currently, need to be understood to avoid overlap and rule conflict. The Project (as a whole) will need to pause from time to time in order to fully evaluate the interactions of all of these complex component parts.

- The consultation document does not discuss the interaction of the income inclusion rule with the "undertaxed payment" rule (or the "subject to tax" and "switchover" rules). Understanding which of these rules has priority over the other (or, indeed, whether they are meant operate alongside each other) is crucial in guiding more detailed comments on the operations of these rules. We understand more details will be forthcoming, but we wish at this point to make very clear that many of our members remain unconvinced in the coherency of the policy objectives of the proposals. However, if such rules are introduced, it is agreed that that the income inclusion rule should be the primary rule, to be applied at the parent entity level only. To allow countries to operate the undertaxed payments rule as a primary rule will dramatically increase complexity, as well as disputes and double taxation, and significantly decrease tax certainty. *Business at OECD* could not support such a rule ordering.

- We do believe (as with Pillar One) that in order to evaluate and then helpfully shape a workable and equitable income inclusion rule, it is necessary to articulate the principles underlying that rule, as well as the need for it.
    - On the first of those questions, is it about all businesses having to pay a minimum level of tax around the world? Is it about ensuring the "right" tax is paid in the right countries? Is it about ensuring that tax is paid where value is created (which, perhaps conflicts with profit reallocation under Pillar One)? Clarity – and broad agreement – will be necessary on those points in order to be able to move forward on important design features.
    - On the second, we do wonder whether BEPS 1.0 has really yet been given a chance to succeed? *Business at OECD* participated fully in that entire project and believes that measures across the range of Action Items have already begun to have significant effects, with even more significant ones to come as the MLI and ATAD are implemented. In order to build business support for Pillar Two at this stage, therefore, it will be necessary for the IF to very clearly articulate why another set of anti-avoidance rules which will, almost of necessity, be quite complex, are necessary.

- Many of our members believe that where an existing national regime already provides sufficient protection against very low overall effective tax rates, that regime should be considered an acceptable regime (and potentially included on a whitelist), and its replacement with a new set of Pillar Two rules should not be required. For instance, all of our U.S. members believe that the GILTI regime should be listed (or be described) as such an acceptable income inclusion rule. That said, having been criticized for its complexity, GILTI is not the only model for an income inclusion rule.

- As an addition to the last point, if a country has an acceptable pre-existing income inclusion regime, or has enacted the final Pillar Two proposal on income inclusion, then any payment to a business headquartered in that country, or to any subsidiaries of that business in other countries (regardless of whether the country in which a particular subsidiary is located has itself adopted an income inclusion rule) should not only be deemed to satisfy the income inclusion rule, but should also in no event be subject to the undertaxed payment rule or to pre-existing income inclusion rules at lower levels in the group in different countries. Issues like these should be covered in the framework needed for Pillar Two, which should be a pre-requisite for political consensus.

- Equally important to our broad membership is the application of a global blending approach and a carve-out for regimes that have been approved under BEPS action 5.

- Finally, while we greatly welcome your attention to accounting questions, we also believe that you need to consider systems issues (e.g. ERPs) as we did successfully in relation to BEPS Action Item 13 and country-by-country reporting.

We have attempted wherever possible to answer your specific questions, and, particularly in relation to the complex (and vital) accounting issues, we would be delighted to provide you with more information and/or the opportunity to discuss with accounting experts and systems experts.

We want once more to reiterate our genuine commitment to engage constructively in this process. However, as we did in our Pillar One comments, we would also note that this commitment to engage is not an unconditional commitment to support any result that is reached. *Business at OECD* remains committed to its *Business Principles for Addressing the Tax Challenges of the Digitalizing Economy* and would be unlikely to support the project in the event of substantial divergence from those principles.

Again, we thank you for the opportunity to comment on this important proposal, and look forward to further engagement at the public consultation meeting and beyond.

Sincerely,

Will Morris
Chair, Taxation and Fiscal Policy Committee,
Business at OECD (BIAC)

Executive Summary

1. *Business at OECD* welcomes the opportunity to provide feedback on the Secretariat's Pillar Two Consultation Document. As the voice of business at the OECD, we aim for our comments to be constructive, both in supporting and challenging elements of the proposal where our members express strong unanimity, as well as in highlighting differences of opinion on the challenges where views diverge. We are committed to proactive engagement throughout this process, even if we do not necessarily agree with any resulting outcomes.

2. The Secretariat's Pillar Two document, which focuses on a narrow set of issues within the larger framework to address global anti-base erosion and profit shifting, makes useful contributions to the ongoing discussion regarding a proposed minimum tax. However, other critical elements remain to be addressed – crucially the priority within Pillar Two between the income inclusion rule and the undertaxed payment rule, as well as the interaction between Pillars One and Two. We anticipate and look forward to a further chance to comment on Pillar Two when additional work results in another consultation document.

3. We strongly believe that the long-term success of this endeavour can create a stable and certain environment for both taxpayers and tax authorities, but in order to do so, the entire framework must be rooted in widely accepted principles. Without this, the benefits of the agreement will be short-lived; any number of political pressures can arise in individual countries or regions, with the ensuing urge to diverge from the international consensus. In order to ensure coherency, anchoring points – rooted in clear principles – are required. Therefore, we encourage the Inclusive Framework to more clearly link the elements contained in Pillar Two (and those regarding Pillar One) to recognized economic and tax policy principles and to establish a framework how all components of Pillar Two interact with Pillar One and any other previously implemented BEPS elements.

4. On 21 January 2019, *Business at OECD* published *Business Principles for Addressing the Tax Challenges of the Digitalizing Economy* ("Business Principles") [1]. This list of 11 policy recommendations should, we urge, continue to be considered in developing modifications to the underlying international taxation norms for the modern digitalizing economy. The core principles outlined in the Ottawa Taxation Framework (which are referenced in our Business Principles) should also continue to be adhered to in this process.

5. There will be significant interaction between Pillars One and Two for countries adopting both proposals, with a high likelihood of double taxation risks without proper coordination. Therefore, it is crucial that further work is undertaken to understand the linkages between these two pillars – in particular that the Pillar Two calculations need to be done taking full account of the reallocations of income and resulting tax that will result from the application of Pillar One

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[1] *See* Business at OECD, Business Principles for Addressing the Tax Challenges of the Digitalizing Economy (Jan 2019), http://biac.org/wp-content/uploads/2019/01/FINAL-2019-01-21-Business-at-OECD-Digital-Principles-Position-Paper.pdf.

Amounts A, B, and C.

6. In addition to rule ordering among the four core elements of the Pillar Two GloBE framework, it is also necessary to contemplate coordination with other existing rules, such as CFC rules, or their replacement with a more holistic solution. It could be appropriate to reduce complexity in the system by recommending the removal of some BEPS measures where any GloBE agreement deals with the same concerns and makes them unnecessary.

7. It is equally important that the design and mandatory implementation of effective binding dispute prevention and resolution mechanisms become a key part of Pillar Two, ensuring that taxpayer rights are respected, and tax certainty is ensured. Related to this, countries should be required to withdraw any unilateral actions (affecting non-resident taxpayers) which would be considered redundant due to Pillar Two implementation.

8. To the extent that countries have already unilaterally introduced rules similar to GloBE (such as the U.S. GILTI regime), Pillar Two should ensure consistent and homogenous enforcement, and take into account those national regimes that achieve broadly the same outcomes as GloBE even if designed differently. Said in another way, duplication between the new GloBE and existing rules should be avoided.

9. The outcome of Pillar Two (in combination with Pillar One) must be workable for both taxpayers and tax administrations, taking into consideration differing administrative capacities (especially regarding the effect of multilateral disputes).

10. We believe it is important that more clarity and early consensus is achieved at a political level as to the outcome of this process, since the consequences of departing from well-established principles of international tax law towards a more complex and burdensome system can lead to undesirable results.

11. Given the enormous changes that GloBE (along with Pillar One) represents to the international tax system, adequate time must be given to arrive at workable solutions that will withstand the scrutiny and the test of time. Arbitrary timelines will only allow for paper consensus that will likely quickly break down in practice if crucial details are not thoroughly discussed and decided.

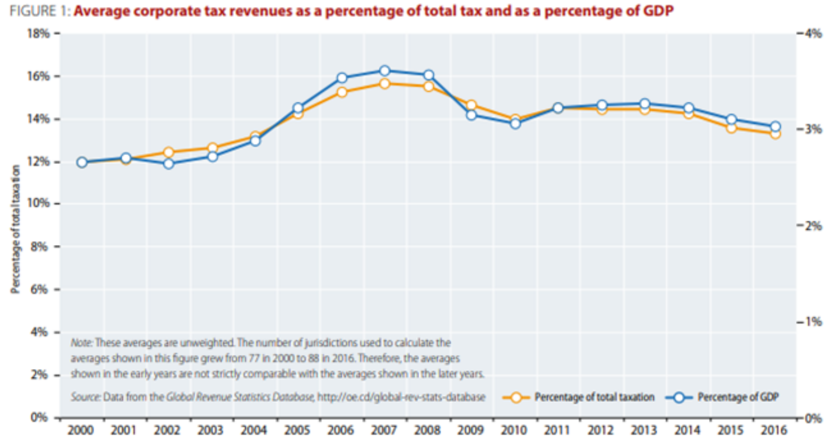
12. Global blending is the only practical way to assess a potential under-taxation of a company without introducing a global harmonized tax base (which we consider out of scope of this project). Similarly, it would be somewhat counter-intuitive to declare certain tax regimes BEPS compliant (in particular those fostering R&D and innovation), only to de facto make them ineffective now via the GloBE approach.

13. As the minimum effective tax rate is not yet decided (or even yet proposed at a specific rate), it is difficult to know what impacts it will have on tax base, investment, innovation, etc. However, the higher the rate is compared to currently prevailing average rates, the higher will be the risk of double taxation impacts.

14. Related to the above point, a thorough impact assessment should be conducted by the OECD, ideally showing the additional impact compared to the already implemented BEPS actions. We believe that with the elimination of harmful tax regimes and the alignment of substance and profit, a major part of the previously assessed BEPS activity is already eliminated (to be verified in the upcoming BEPS Action 11 report). The IF should therefore have robust data at hand when deciding about the cost-benefit impact of the implementation of any potentially complex Pillar Two framework.

15. The above point is especially important, as already the driving hypothesis of the "race to the bottom" for corporate tax rates (implicitly alluding to lower tax revenues) should be complemented by the analysis the OECD has performed with regard to corporate tax revenues in relation to GDP and overall tax revenues. Both percentages have actually *increased* over the past 15 years and remained relatively stable over the past 5-7 years, despite the reduction in corporate income tax rates [2]:

FIGURE 1: **Average corporate tax revenues as a percentage of total tax and as a percentage of GDP**



16. We are pleased to provide input below on the issues requested for public comment in the Consultation Document.

Introduction: Benchmarking the "Pillar Two - GloBE" against our Business Principles

17. *Business at OECD* considers it imperative to respect our aforementioned Business Principles, published in January 2019, in addressing the tax challenges of the digitalization of the economy. We previously provided an initial benchmarking of the Pillar One "Unified Approach" against these Business Principles to demonstrate the areas of greatest alignment and challenge, and now do the same for Pillar Two.

[2] *See* OECD Corporate Tax Statistics: https://www.oecd.org/tax/tax-policy/corporate-tax-statistics-database-first-edition.pdf

Principle	Score	Comment
Be based on long-standing and well-founded underlying principles of international taxation		The proposal introduces a new feature to the international tax system by way of a multilateral minimum tax but has not yet clearly defined the principles underlying Pillar Two or described the interaction with Pillar One. Furthermore, the Pillar Two proposals may conflict with the EU treaties.
Not ring-fence the digital economy		The proposal does not appear to ring-fence any portion of the digital economy.
Respect the Ottawa Taxation Framework principles		Neutrality: No explicit discrimination of digital or remote sales. Efficiency: Unclear at this stage, but efficiencies should be pursued. Certainty: Not at this time. Simplicity: Not at this time. Effectiveness: Unclear at this stage. Fairness: Opportunities for avoidance appear to be limited Flexibility: The proposals should keep pace with changing business models.
Be grounded in the concept of value creation		N/A at this time (although in certain situations, e.g. fully local value chains, there could be an inconsistency with the concept of value creation).
Reduce instances of double taxation		We believe the OECD is committed to preventing double taxation, but the lack of reference to dispute prevention/resolution mechanisms is concerning. Also, there is a lack of discussion of the interaction between the two elements of Pillar Two, as well as between Pillars One and Two, both of which raise numerous issues regarding potential double taxation.
Be introduced as a comprehensive package		The proposal commits to implementation as a comprehensive package (alongside an evolving Pillar One proposal) and also notes that coordination in entry into force is required. However, no framework is available or proposed to clarify the interaction of the various components or existing legislation. Dispute prevention/resolution must also still be included.
Be reflected in model treaties and commentary		The proposal recognizes that effective multilateral implementation requires robust mechanisms (such as treaty changes or other instruments). However, certain aspects seem in conflict with the EU treaties.
Provide tax certainty for taxpayers and tax administrations, including strong dispute resolution mechanisms		The proposal is still too broad (and lacking in detail) to give taxpayers certainty. However, we feel certain, given the OECD demonstrated commitment to increasing tax certainty that this will be improved upon.
Have global agreement		N/A at this time.
Minimize the administrative burden on taxpayers and tax administrations		The proposal recognizes some of the administrative challenges that it will cause, however, much more detail (and creative thinking) will be required to address these. If a per-jurisdiction or per-entity blending approach is adopted, this traffic light will turn red.
Be developed through inclusive consultation with all businesses and other stakeholders		We welcome the opportunity to comment on the proposal, but regret that no economic impact assignment is available for a complete analysis.

18. As a preliminary matter, it is hard to state what should be used as a starting point until the entire scope of Pillar Two is known, including the interactions between the "income inclusion"

and “tax on base eroding payments” rules, as well as the policy objectives. It seems that the policy concerns behind each rule relate to potential erosion of tax bases (either of a shareholder jurisdiction or of a jurisdiction remitting payments overseas). A third policy concern appears to be scenarios where low levels of tax are paid (either in relation to local activities or more broadly across a group). Financial statements may be an appropriate place to start to meet some of these objectives – although the interaction (or lack thereof) between local accounts and group accounts, as well as between accounting profits and taxable profits, will pose significant challenges even there.

19. Similarly, the blending approach and carve-outs selected would have differing implications that may or may not meet different policy objectives. Their interaction with the information sources selected (e.g. group financial statements) may also result in different approaches being appropriate. As all of these elements will need to work together, and potentially alongside other measures not yet detailed (as well as Pillar One outcomes), it is imperative that the policy objectives are clearly articulated.

Section 1. Financial accounts

20. The questions related to whether global financial accounts can serve as a base for a global tax base used to assess Pillar Two are the same as for Pillar One. We therefore invite the Secretariat to consider the remarks we have made in this respect in our comment letter to Pillar One, in particular with regard to segmentation and consolidation of accounts below the group level. We fear in particular that many tax authorities would consider the financial accounts as not granular enough or lack the understanding of certain tax accounting rules, and therefore demand numerous reconciliations.

21. Joint ventures and minority shareholdings could raise specific issues in that respect, because taxes paid might be accounted for differently than the respective profits.

22. Our members do not have a single view on the use of financial accounts as a starting point for determining tax base for the income inclusion rule. Many members think that consolidated financial statements (based on either U.S. GAAP or IFRS, or a whitelist of acceptable similar GAAP standards) could be a starting point that would ensure consistency and simplify compliance costs. Others, however, have noted that the local accounts are more likely to be aligned with the local tax bases from which tax computations are based, and noted that significant adjustments may be required to the group accounts in order for them to be meaningfully compared to cash taxes paid. None of our members considered that it would be an easy exercise to utilise financial accounts, and noted considerable compliance burden with any approach. The cost and effort of using financial accounts as a basis would be even bigger if entity-per-entity and even country-per-country blending would be considered, especially if data consolidated on parent level needs to be broken down to entity level (cost and effort include, for instance, system costs to prepare local accounts in parent GAAP and related audit fees).

23. A range of other options exist (e.g. the use of consolidated financial statements, with adjustments as set up by the corporate income tax regulations applicable in the parent company jurisdiction), each of which has its own trade-offs and may not meet the policy objectives while keeping compliance costs and complexity low.

24. Noting some challenges with using financial statements, a broader approach to determining ETR could be considered, as a company's total direct tax contributions to a government consist of more than simply corporate income taxes paid, but also other taxes designed to tax corporate profits, such as sector specific levies, withholding taxes, and government royalties. This may be a more complete and accurate measure of a company's direct contribution to tax revenues, particularly where specific measures have been introduced domestically to ensure that higher levels of tax are paid already. An alternative might be agreement to roll back sector specific levies and taxes that are not based on profitability (although this would result in the right to tax being migrated to other countries).

25. Clarification of the scope of adjustment and simplification are necessary. If certain adjustment is needed, only numbers that can be easily picked up from the figures in the consolidated financial statements should be used. A method of excluding permanent differences from earnings before tax is appropriate.

26. From the viewpoint of reducing the administrative burden, it is important to minimize the adjustment items as much as possible. An important permanent difference common to many countries is exclusion of dividends received. The amount of dividends received should be excluded in order to eliminate double taxation. Capital gains and losses need to be considered carefully, as there are large differences in whether they become subject to taxation or not. Other significant permanent differences such as certain revaluation gains, impairment losses, investment allowances, or R&D super deductions would need to be analysed.

27. Similar to permanent items, temporary timing differences would need a hypothetical or standard system of taxation to determine those. This however would then be equal to making deferred adjustments. That standard system would need to then either match closely to major subsidiary taxation or there would be elections to match.

28. One way Pillar Two might deal with timing issues is to have averaging (at least 5 years) and loss carry forwards in order to take into account timing differences between parent country and foreign country to get a real minimum tax. However, this will not consider all timing differences which sometimes span over a longer horizon and would therefore discriminate against businesses with longer investment cycles.

29. Deferred tax accounting would be a relatively simple and realistic approach for certain companies from the viewpoint of using financial accounting as a start point and simplification, but more complex for other companies. Careful consideration is required with regard to the valuation allowance for deferred tax assets and equity in earnings of affiliated companies. It should also be noted that numerous companies do not use deferred tax accounting currently, which would make significant investments necessary for them to upgrade their accounting systems – and for tax authorities to understand these new rules. Adjustments for deferred taxes may need to be optional depending on a company's circumstances.

30. The Consultation Document seems to indicate a bottom-up approach to applying the income inclusion rules. This would require a large number of complex calculations to coordinate and adopt such an approach, which is likely difficult and costly to perform. Rather, income inclusion applied at the ultimate parent level (using consolidated GAAP and worldwide blending) would

offer a practical and proportionate measure. It requires consideration of many of the same intra-group issues already considered in the Action 13 CbCR guidance.

31. This of course will have behavioral impacts on how jurisdictions approach other issues, such as CFC rules. The same incentive principle applies at every tier – i.e. if somebody is going to tax the profits, then jurisdictions will prefer that they collect that revenue. This may lead to a need for some constraints on what options are/are not acceptable for jurisdictions to adopt in that context.

Section 2. Blending

32. The use of blending rules is necessary to make this proposal workable and manageable. The wider the scope of the blending, the easier the application of the GloBE rules will be. In particular, the entity blending approach should be ruled out on general principles because of its complexity, but also because many jurisdictions do not tax on an entity by entity basis (e.g. group relief, fiscal unity). The potential argument for entity blending, i.e. to eliminate accumulation of low tax income in one entity by blending it with high income tax income in other entities in a country, should also be discarded as it could be spun further into segment blending (i.e. blending of low tax and high tax income in the same entity). We urge the IF to draw a line between complexity and result.

33. Many members are concerned that a per-country blending would result in tremendous complexity in determining the respective tax rates to be compared with the threshold rate, and would therefore be administratively burdensome for MNEs and taxing authorities alike.

34. The worldwide blending approach will be the most likely way to make this proposal work as a compromise between associated cost and return. This approach would simplify discussions concerning the use of consolidated financial statements, since they could be the right source for working out the MNE effective tax rate. Another favourable element of global blending supported by members is that company operations vary in each country due to regulatory, legal, and business constraints. A global approach also is more suited for highly integrated businesses. If countries are concerned that global blending is not granular enough, specific anti-avoidance rules could be used to alleviate such concerns.

35. Since the allowable range for temporary differences, permanent differences, and exemptions varies depending on the way of blending, conclusions should be drawn on blending first. Using a jurisdictional blending seems to be problematic because the figures for all individual companies, such as the income and tax amounts, need to be differentiated by jurisdictions. If financial accounting is used as a starting point, a worldwide blending has the lowest compliance cost and would reduce the volatility arising from the various differences and the necessity of carve-outs. However, if the system design requires a procedure for summarizing all foreign subsidiaries' income and corporate tax amounts, such as GILTI in the United States, the compliance cost is considered to be the most excessive. We believe it is essential to have a system that determines whether the tax rate is below or above the minimum tax rate based on consolidated financial statements. As for an entity blending, some countries can avoid an increase in compliance costs if it is acceptable to use an effective tax rate calculated for the purpose of CFC tax system as it is.

Section 3. Carve Outs

36. As mentioned above, when considering exclusions to this proposal, consideration should be given to those MNEs which are already subject to high tax rates (that usually coincide with non-mobile activities); in these cases, the existing regulations ensure that no profit shifting is carried out to low-tax jurisdictions and therefore, no additional rules would be needed. Hence, when the ETR of an MNE on a consolidated basis is above a certain threshold, the measures of this proposal should not be applied, since the objective of ensuring an appropriate level of taxation would be already met.

37. Commonly accepted incentives such as tax credits (or other incentives) for R&D and capital investments, and tax reduction by applying a reduced tax rate or income deduction for the purpose of attracting certain investment, should be exempted as long as business entities are engaged in active activities. Items subject to rules that are determined not to be harmful tax regimes based on Action 5 should equally be excluded, given the effort that countries and companies have made to comply with them. However, exemptions based on facts and circumstances would lead to an increase in administrative burden and thus must be optional. When adopting worldwide blending calculated from the consolidated financial statements, it may be more appropriate to adopt the method where a certain percentage of tangible assets is deducted as a deemed active income.

38. In terms of a further carve-out, by not burdening smaller businesses with significantly complex rules, we would advocate for a fixed threshold under which the GloBE proposal would not apply.

39. Some members suggest to exclude companies where the majority of the value chain is located locally in countries, as it would suggest that a potential low taxation is due to the specifics in country taxation and not due to international tax planning.

Section 4. Other Issues

40. Any Pillar Two agreement should provide criteria for exempting already existing equivalent income inclusion regimes (and/or maintain a list of specific regimes). For example, if financial accounting measures were required, GILTI rules wouldn't seem to work and a switch from one base to another would make it difficult to avoid double taxation. As such, taxpayers subject to GILTI should be exempted from the application of Pillar Two.
    Similarly, rules for coordination/expansion of seemingly redundant measures (e.g. CFC regimes) should be defined.

41. If financial accounting is adopted, permanent items (such as dividends, step-ups, business combinations, discontinued operations, extraordinary items, or impairments not recognised in a territory) would need to be adjusted to financial accounting. However, to define permanent differences there needs to be a tax system, such as a hypothetical or standard system, to compare it to.

42. Other possible sources of double taxation risk arise from basic mismatches (e.g. timing differences associated with GAAP differences, or differences between the parent country tax

legislation and local tax legislation) or mismatches in measuring foreign profits for purposes of income inclusion versus foreign tax credit relief.

43. With regard to other elements contained in the GloBE approach, the subject-to-tax test should be based on the nominal rate, and not on the effective tax rate. The guidance should clarify that this rule only applies to related party payments.

44. Some of our members have raised detailed design issues about the undertaxed payments rule and we hope to have the opportunity to comment on those issues soon – and certainly before any binding decisions are taken

45. The Inclusive Framework should consider what effect Pillar Two might have on bilateral treaties to the extent that a tax on base eroding payments infringes the non-discrimination clause of Article 24(4) of the OECD Model Convention.

46. A top-down approach could avoid double taxation by removing from the scope of any base eroding payment rules any subsidiaries of an MNE which is subject to the income inclusion rule in its ultimate parent jurisdiction. There is a need for this type of rule ordering because of the complexity arising from per-country determination of consolidated entities and related shareholders.

47. The original programme of work, which is appended to the consultation document, contemplates the extension of the subject to tax rule to unrelated parties (para 29, Annex B). This should be explicitly removed from consideration. An extension to unrelated party payments would massively increase the scope of Pillar Two by bringing legitimate business transactions into a base erosion project. It is hard to see the justification for this increase in scope; in terms of proportionality, the resources required to bring it into scope would be huge compared to any potential base erosion.

48. Finally, many of our members have expressed concerns that the proposal (both as an income inclusion rule and/or a tax on base eroding payments) would not be permissible under EU law. We consider it vitally important that potential issues around domestic/transnational law compatibility (in relation to all participating countries) are assessed before agreement is reached. The alternative is decreased certainty over prolonged periods of time as laws are tested, and ultimately differences between how rules are implemented.