BUSINESS at OECD

February 3, 2023

To: International Co-operation and Tax Administration Division
Organisation for Economic Cooperation and Development
Centre for Tax Policy and Administration
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Submitted by email: taxpublicconsultation@oecd.org

Re: *Business at OECD* (BIAC) comments to OECD's Public Consultation on the GloBE Information Return

Dear Secretariat Team,

Thank you for providing the opportunity for the *Business at OECD* (BIAC)[1] Tax Committee to comment on the public consultation document "Pillar Two – GloBE Information Return" (the "Document"). As a practical matter, 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. In this context, the GloBE Information Return (the "GIR") plays a critical role in helping to meet those goals. We therefore welcome the launch of this public consultation with stakeholders and would be ready to provide supplemental feedback as the GIR is refined in the months ahead. Consistent with our standard approach, the BIAC consultation response is a consensus document which reflects a comprehensive and coordinated response from our members.

The GloBE rules are complex. 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. On the contrary, the 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. Substantial and effective permanent safe harbors are necessary in order to ensure the GloBE rules are workable – there is no sense in including requirements in relation to countries or entities where a GloBE top-up tax is clearly not going to be applicable.

In this respect we note with concern the repeated references in the Document to an objective of the GIR being to collect "*the information a tax administration needs to evaluate the correctness of a Constituent Entity's GloBE tax liability*" [emphasis added] – an unrealistic objective at odds with the other stated objective "*to perform an appropriate risk assessment*". The disconnect between these concepts is an unstable foundation on which to build a GIR that does not impose an inappropriate level of compliance and does not risk the rules being un-administrable.

[1] Established in 1962, *Business at OECD* (BIAC) stands for policies that enable businesses of all sizes to contribute to growth, economic development, and societal prosperity. Through *Business at OECD*, national businesses and employers' federations representing over 7 million companies provide and receive expertise via our participation with the OECD and governments promoting competitive economies and better business.

The GIR should not be used as an audit tool. Modern tax compliance systems around the world are framed around relying on self-assessment, coupled with reporting obligations that require sufficient (but not excessive) information to be provided by taxpayers to enable tax authorities to undertake a risk assessment. Tax authorities are able to target their review and audit activity based on risk profiles and then seek additional information from taxpayers to resolve their concerns or to enable an assessment. Due to the complexity of the GloBE rules, however, it would never be possible to design a GIR that provides every single piece of information that a tax administration might need to evaluate the correctness of every aspect of the GloBE rules. Any attempt to do so will result in excessive and unmanageable compliance requirements for businesses and will overwhelm tax administrations with the sheer quantum of data. 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.

A manageable level of compliance and administration for MNEs and tax administrations will be best facilitated by differentiating disclosures in the GIR 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 harbor 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 exists is a missed opportunity for significant simplification. Designing disclosures to facilitate a targeted review and risk assessment should benefit both MNEs and tax administrations.

Entity by entity disclosures across all jurisdictions regardless of whether there is a GloBE liability would not only result in excessive levels of compliance for both MNEs and tax authorities but also pose significant data confidentiality concerns due to the commercially sensitive nature of the required level of detail across all entities within a group.

We therefore propose a balanced approach to disclosure sufficient to support appropriate risk assessment activities as follows:

1. Where a safe harbor applies, the only disclosures required should be those relevant to confirm the operation of the safe harbor;
2. Where a safe harbor does not apply, disclosures should be limited to those which form part of the calculation of a GloBE liability – at present the disclosure proposals are in excess of the level of detail required to calculate the GloBE liability; and
3. Where a safe harbor does not apply, disclosures should be on a jurisdictional basis, with CE-by-CE disclosures only required for jurisdictions where a GloBE top-up tax liability is relevant.

In the event that a tax authority undertakes a risk assessment and identifies that a GloBE liability does in fact exist, we accept that the MNE will be required to provide CE-by-CE calculations and supplementary information sufficient to resolve the inquiry.

In addition to the above, we recommend that the GIR appropriately differentiates data to ensure that jurisdictions only receive data from the GIR if there is a reasonable expectation that top-up tax could be allocable to that jurisdiction. For example, where the UPE is located in a jurisdiction that applies a QIIR, the GIR data would not be shared with other jurisdictions unless another jurisdiction also had the ability to apply an IIR (e.g., where there are partially-owned parent entities in the structure). Otherwise, the unnecessary exchange of data should be avoided.

Irrespective of how the GIR is framed, the level of compliance imposed on MNEs and tax authorities by the GloBE rules is significant. Every opportunity to simplify the operation of the rules and to target the efforts of MNEs and tax authorities to circumstances where a GloBE liability is relevant will ensure the administrability and effectiveness of the rules. We believe that a permanent safe harbor that is designed to target compliance only towards those jurisdictions where a top up tax liability could be relevant (in a similar manner to the transitional safe harbor) is critical to achieving this. In our view, the proposed framework for permanent simplifications described in the safe harbor and penalty relief guidance[2] does not achieve this objective.

In Appendix I, we have provided a more detailed table of comments – consistent with the approach taken for other *Business at OECD* (BIAC) consultation responses.

The *Business at OECD* (BIAC) Tax Committee wishes to express our thanks to the Secretariat and to WP11 for the opportunity to engage on these important practical issues, and stands ready in any way to support the continuing work on Pillar Two. As Pillar Two implementation starts to take shape in 2023, we believe that it is now critically important that significant work is undertaken between now and implementation (and beyond) to ensure that Pillar Two achieves its stated goal of implementing an administrable global minimum tax without adding double taxation burdens.

We look forward to working with you to advance this goal and would be pleased to provide additional support and assistance in further implementation efforts. Please let us know if any questions arise from our general and specific comments provided. We look forward to constructively engaging with you further.

Sincerely,

Alan McLean
Chair, *Business at OECD* (BIAC) Tax Committee

William H. Morris
Chair Emeritus

Cc: Hanni Rosenbaum, Executive Director, *Business at OECD* (BIAC)

[2] OECD/G20, "*Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)*", December 2022

Appendix I

Our detailed comments are as follows:

Ref	Topic	Issue	Recommendation
General	Standardized GIR	Support for a standardized GIR	• We welcome the development of a single standardized GIR, to be adopted globally utilizing a 'submit and exchange' protocol similar to Country-by-Country Reporting (CbCR). In our view, this is important from a tax certainty perspective given the global nature of the Pillar Two rules. The alternative of a multitude of separate jurisdictional GloBE filing templates would be extremely complex and would likely give rise to disputes. Each additional disclosure mandated by a country for either IIR, UTPR and/or qualified domestic minimum top-up tax (QDMTT) will require a new system or compliance system to be built and/or adapted by MNE Groups. • A key simplification tool is to ensure that the GIR targets disclosures for jurisdictions that have a GloBE 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 harbors to eliminate detailed reporting requirements for low-risk jurisdictions. This should include jurisdictions that have introduced a local QDMTT. Where possible, permanent safe harbors should primarily use existing data (i.e., similar to the approach applied for the transitional safe CbCR safe harbor).

			• ***Step 2:*** Identify jurisdictions (that do not qualify for a safe harbor) 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 Income Inclusion Rule (QIIR). 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 under taxed profits rule (UTPR). This information may require disclosure to a wider range of jurisdictions.
General	Systems and availability of data	While some MNEs may seek a systems-based solution for GloBE to mitigate an otherwise overwhelming level of additional compliance, systems-based solutions are likely to be expensive and many MNEs will have financial and operational constraints to implement automated reporting solutions in the near term. It is however important to note that any systems-based solution is likely to focus on extracting data points from the natural accounting system but is highly unlikely to be a fully automated reporting solution. Restructuring MNE accounting systems to fully align with GloBE will not be feasible from a commercial and financial perspective – the scale of such a system is more akin to a fully-fledged finance transformation which often costs tens of millions of dollars and take several years to plan and implement	• For an MNE group, each additional data point added to the GIR is likely to add thousands of extra disclosures. We therefore recommend that the GIR is designed to be as streamlined as possible.

		for large MNEs. We therefore expect that a level of manual intervention will always be necessary for most, if not all, data points that flow into the GIR in the short term for all, and in the longer term for many in-scope MNEs.	
General	"Collect and Retain" v "Report"	We note that the language in the Document is somewhat inconsistent. For example, in Section 1, para 5, there is a reference to the data points that an MNE "may need to collect" and similar language is included in para 9 where it discusses the "information an MNE may need in order to calculate its tax liability". However, in para 11, we note that the wording used changes to "the amount and type of GloBE information that MNE Groups should be expected to collect, retain and report to a tax administration".	• In our view, there should be no obligation for MNE Groups to "collect and retain" information that is not relevant to a GloBE liability or required to be reported. For example, if CE-by-CE data is only required where there is a GloBE top-up tax liability (e.g., in the case where a safe harbor does not apply), MNE Groups should not still have an obligation to "collect and retain" CE-by-CE data, as this would remove any simplification benefit realized from having a streamlined GIR. • As noted above, the requirement to collect and retain thousands of data points for GIR reporting purposes would also present stewardship risks and the need for additional review and control mechanisms.
General	Additional Information Requests	Whatever form the GIR takes, it is expected that additional information requests will be received from tax authorities. This is a process and relationship that is familiar to both MNEs and tax authorities. The nature of the information sought will depend upon the concern or area of inquiry being pursued through the risk assessment process.	• We do not believe it to be necessary or useful for the GIR to pre-empt any such requests by prescribing fixed format templates. • Simplicity is best served through a targeted and streamlined GIR that facilitates an appropriate risk assessment with the ability for supplemental inquiries or requests for further information in a format which best addresses the area of concern by the relevant tax authority. • Any such requests should also be coordinated via a designated lead tax authority to avoid duplication and ensure that the correct rule order is being applied (i.e., that

			jurisdictions are not making unnecessary audit information requests). • In this regard, we also refer to our comments in response to the Pillar Two Tax Certainty consultation, where we emphasize the importance of the peer review process and jurisdictions respecting the common approach and order of the rules, in line with the commitment proceeded in the OECD / G20 October 2021 Statement[3].
General and Annex A1, Section 3.4	CE reporting requirements	A requirement for GloBE calculations to be included in the GIR on a CE-by-CE basis is a source of serious concern for Business at OECD (BIAC) members. The GloBE calculations require many data points to be managed which already presents significant challenges for business from a data identification, extraction and systems perspective. The requirement to disclose all of these data points on the face of the GIR could result in thousands (if not hundreds of thousands) of data points being reported. It can often be the case that MNEs report data internally by business line or for reporting segments, which may include information with respect to CEs in different jurisdictions. To report on a CE basis would therefore require significant investment to modify existing systems and/or create new tools to meet the GloBE reporting requirements.	• If there is no GloBE top-up tax liability arising in a jurisdiction, there is no objective reason to request a breakdown of GloBE calculations on a CE-by-CE basis. • The completion of CE-by-CE reporting will give rise to excessive administrative burdens for MNEs which would be contrary to the commitments provided by the IF in the October 2021 Statement on the two-pillar solution[4]: *"To ensure that the administration of the GloBE rules is as targeted as possible and to avoid compliance and administrative costs that are disproportionate to the policy objectives"* • We therefore strongly recommend that reporting requirements should be applied on a differentiated basis (as outlined below). In this regard, we also refer to our comments on the need for the development of effective permanent safe harbors.

[3] OECD / G20, "*Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*", 8 October 2021

[4] ibid

		We would like to re-emphasize that the basic principle guiding the minimum tax proposals is that GloBE calculations are prepared at a jurisdictional level, with allocations between Constituent Entities in jurisdictions only being completed where a GloBE top-up tax liability arises. In our view, this approach is consistent with the overarching purpose of Pillar Two: to achieve an outcome where an MNE group has a minimum effective tax rate of 15% for each of the jurisdiction in which it operates.	• It is also important to note that, where granular CE-by-CE reporting is required in the GIR, we have real concerns about the widespread sharing of commercially sensitive information from a data confidentiality perspective. Our members have voiced concerns that the detailed data reported could also be used inappropriately for other non-GloBE purposes. • The requirement to report thousands of data points would also present stewardship risks and the need for additional internal review and control mechanisms. This could also add complexity to any early certainty process, if an element of this process involves a review of control frameworks.
General	Language		• We recommend that it is clarified that the GIR can be completed for each jurisdiction using the language of the UPE or lead tax administration (e.g., English) and that this will be acceptable for all jurisdiction (i.e., there is no expectation of a linguistic translation of the contents of the return).
General	Statute of limitation periods	It does not seem clear from the Document how the GIR is intended to interact with different statute of limitation provisions across multiple jurisdictions.	• We recommend that it is clarified that a standard statute of limitation period is applicable for GloBE compliance purposes. If this is not possible, the statute of limitation period should be aligned with the relevant period of the UPE jurisdiction or the jurisdiction of the lead tax administration (if different).
General	Amended filing requirements	It is not clear how common tax adjustments that are required post-filing of the consolidated financial statements, such as under/over adjustments are required to be disclosed.	• Further clarification would also be welcome regarding the necessary GIR requirements when tax provisions/accruals are updated in the subsequent year's consolidated financial statements, referred to as under/over adjustments. It is not clear for GloBE purposes whether:

		In addition, it is not clear whether an amended assessment from a prior income year that triggers Article 4.6.1 requires that an amended GIR be lodged.	1. The GIR includes under/over adjustments in the year disclosed in the consolidated financial statements; 2. Under/over adjustments may be included in the 'correct' GloBE year such that the tax matches the year that the related GloBE Income arises; or 3. Under/over adjustments require amendment of the prior year GIR since they meet the conditions of an Article 4.6.1 adjustment. • We recommend that under/over adjustments are included based on (1) above unless the MNE elects to choose (2) for a jurisdiction (the election must not be revoked for a set number of years). • We recommend that Article 4.6.1 adjustments that are included in the Additional Top Up Tax calculation do not trigger an amended GIR to be lodged but instead any disclosures to enable risk assessment by tax authorities be included as Article 4.6.1 disclosures.
Section 1, para 3	Background	Paragraphs 1 and 3 of the Document states "*in particular, the main objective of the Inclusive Framework is to ensure that the information and tax calculations that an MNE Group is required to file are sufficiently comprehensive to allow tax administrations to* ***evaluate the correctness of a Constituent Entity's tax liability under the GloBE Rules*** *and perform an appropriate risk assessment*." [emphasis added] In Section 3, para 10, when discussing the "balance" that must be struck regarding the appropriate level	• In our view, evaluating the correctness of a CE's liability and performing a risk assessment are very different things. It is important that the intended use of the GIR is clear during the design-stage. We believe that it is unrealistic to expect that the GIR will provide all of the information that is required to evaluate "the correctness" of an MNE's GloBE calculations and it is inappropriate for the GIR to try to do so. • We believe that the GIR should operate in a similar manner to existing compliance mechanisms that are applied across the world (i.e., the compliance reporting requirements are used as a means to provide information which is sufficient for

		of reporting under the GIR, reference is also made to "*ensuring tax administrations have the necessary information on the tax calculations made by the MNE Group to evaluate the* ***correctness*** *of a Constituent Entity's GloBE tax liability…*". This is inconsistent with the implicit acknowledgement in Section 3, para 16 that further information would be required in respect of risks identified based on the information in the GIR.	tax authorities to undertake a risk assessment, understanding that additional information may be required based on that evaluation of risk).
Section 3, para 13	Differentiation	The information required to be reported in the GIR is extensive and is provided for the purposes of enabling a risk assessment to be made in respect of an MNE Group's GloBE liability. In most instances, the relevance of this risk assessment will be limited to a single implementing jurisdiction – for example, the UPE jurisdiction which has implemented a Qualified IIR. In those circumstances, it is not necessary or appropriate for other implementing jurisdictions to receive all of the information reported in the GIR. We believe that this principle is reflected in the October 2021 Statement where it states that "*the GloBE rules will have the status of a common approach. This means that IF members… accept the application of the GloBE rules applied by other IF members including agreement as to rule order and the application of any agreed safe harbors*".	• We strongly support the differentiation of information reported in the GIR based on the potential for GloBE liability in a jurisdiction. Any additional compliance required to support the differentiation is marginal and is significantly outweighed by the compliance savings from only having relevant tax authorities in receipt of the detailed GloBE information. • We recommend that GIR is designed in a way which facilitates differentiation, and that this is managed after the submission of the GIR as part of the information exchange program, rather than by requiring incremental and different GIR submissions from the MNE. • Wherever possible, differentiation should be used to ensure that only the necessary information regarding a group's activities outside of a given jurisdiction is provided. For example, where a jurisdiction is subject to a QDMTT or a safe harbor, the IIR or UTPR jurisdictions should receive only a confirmation that the jurisdiction is not subject to QIIR or UTPR. Similarly, UTPR jurisdictions should only receive information necessary to determine whether a UTPR should

		The compliance burden associated with GloBE flows not only from the computations and reporting under the GIR. Significant additional compliance effort is expected to answer questions from tax authorities on the information disclosed. Subjecting MNEs to reviews of the information filed in the GIR from countries which cannot reasonably expect to collect top-up tax is, in our view, inappropriate. While a counterargument could be advanced that a jurisdiction which does not reasonably expect to collect top-up tax would not be interested in asking questions on that information, we believe that this serves to reiterate our core argument that these jurisdictions do not need to receive this information.	be levied because the reported income is not subject to either an IIR or QDMTT.
Section 3, para 16	Risk assessment and follow-up information requests	The Inclusive Framework may also explore the possibility of developing other administrative mechanisms to facilitate further coordination and consistent application of the GloBE Rules. For instance, work could be undertaken to develop a coordinated framework for further information requests in respect of risks identified based on the information in the GIR.	• As noted above, we strongly support a common GIR. • Where a Qualified IIR is applicable and the only jurisdictions which receive the detailed GIR data are those which could reasonably be expected to collect top-up tax in respect of the MNE group (e.g., the jurisdiction in which the UPE, IPE or POPE is located), we do not believe that a coordinated framework for further information requests should be necessary. • The process of making tax filings which are followed by additional information requests from the relevant tax authorities is a process which is well understood by taxpayers and tax authorities. It should therefore be possible to follow those existing relationships and processes.

			• However, we do see merit in a coordinated framework being available in circumstances where a Qualified IIR does not apply and the UTPR is relevant, as this could provide an orderly process and alleviate unnecessary compliance. In this regard, we also refer to our feedback in our Tax Certainty consultation response which highlights that an Advance Certainty process for UTPR allocations could be helpful. • From a process perspective, we strongly recommend that the GIR should be filed with a lead tax administration. This lead tax administration should also manage any information requests related to the GIR to avoid duplication and to ensure that the correct rule order is being applied (i.e., that jurisdictions are not making unnecessary audit information requests). • We also recommend that the role of the lead tax administration (e.g., the tax authorities in the UPE jurisdiction) should be clarified, along with the roles and powers of tax authorities in other jurisdictions. • Where deemed necessary, there should be a single central audit of a GIR, and this should be initiated and coordinated via the lead tax administration.
Annex A1, Section 1.3.3	Functional Currency	The GIR requires the functional currency of the UPE to be disclosed. MNE accounting systems differ in how they are set up to manage foreign currency. Some systems:	• Clarification will be required whether the GIR could be completed in local currency or UPE currency for each jurisdiction. • We request that an MNE should be able to elect to disclose using the UPE currency or the local functional currency for a

		- Use different translation methods to translate from local functional currency to UPE currency; and - translate to UPE currency at different levels of granularity in the accounting consolidation systems. Depending on the MNE accounting system, the data that may be captured in either the local functional currency or the UPE currency. For many MNEs, the level of detail required for the GloBE ETR calculation is only available at the local entity level in local functional currency. If the natural accounting system is not followed, some MNEs will face major challenges in complying with the GloBE calculation requirements.	jurisdiction, when completing the jurisdictional ETR calculations and populating relevant data into the GIR. • As a safeguard, we believe that the approach taken would need to be continuously applied over a stipulated period (e.g., 5 years) unless there is a fundamental change to the MNE (e.g., a takeover) or to its accounting systems. We recommend that additional administrative guidance is published to address this point. • We also believe that following the natural accounting system will be easier for tax authorities to verify, as they can leverage existing governance and assurance processes (e.g., internal/external audit processes). In addition, requiring the conversion of large amounts of data outside of the accounting system creates a risk of errors and is likely to require significant additional review/assurance.
Annex A1, Section 2.2.1	Corporate structure	Annex A1, Section 2 requires extensive reporting of a group's corporate structure, with detailed information needing to be provided for each entity in the group. It can be the case that this information is not readily available or tracked at a central level. The data needed to complete these tables is likely therefore to have to be populated on a manual basis, as we believe it would be challenging for a group to automate the population of these data points.	• Having a standardized format for providing the MNE corporate structure may result in groups being required to significantly upgrade existing legal reporting tools. • We recommend that groups are allowed to provide the legal group structure based on existing tools if it is more convenient to do so. • The requirement to duplicate the reporting of data that is already reported under CbCR should be avoided where possible. • In line with our wider comments on data confidentiality and segmented reporting, we believe that the exchange of

			information of corporate structure data should also be restricted from a confidentiality perspective.
Annex A1, Section 2.3	Corporate structure	For entities which are 100% owned directly or indirectly by the UPE (or the entity collecting top-up tax), any intra-group changes in ownership in the shareholding structure should not have any impact for GloBE purposes. Annex A1, Section 2.3 also appears to require the restatement of information for all constituent entities in the MNE Group even if only one entity has changes to disclose.	• In our view, the requirement to disclose changes in the corporate structure should only apply to changes in ownership with respect to Constituent Entities that are not wholly-owned by the group or those which cease to be wholly-owned by the group. • If disclosures of changes of ownership are required, allowances should be provided where, in the case of an internal group restructuring, an entity is transferred in a number of steps within the same year. • We also believe that it is overly burdensome to re-provide information year-on-year for CEs in which no changes have been made. • We recommend that, where the filing constituent entity reports "Yes" in relation to Note 2.2.1.1, only the constituent entity(ies) that were subject to the change should be required to complete all rows from 2.2.1.2 to 2.2.1.18.
Annex A1, 3.2	Jurisdictional exceptions	While it is helpful that the jurisdictional exceptions (Section 3.2) precede the jurisdictional computation (Section 3.3), it is not clear that the satisfaction of a jurisdictional exception would result in no additional reporting requirements for that jurisdiction.	• We recommend that, where a jurisdictional exception applies, it is clearly stated that no further GloBE calculations are required (i.e., the completion of Annex A1, Section 3.3 onwards is not necessary). • The introduction of appropriate permanent reporting safe harbors is critically important to ensure that the compliance process can be managed in an efficient manner.

		At each level of reporting, the level of data a group needs to produce is likely to rise exponentially. This could vary from: - Reduced reporting due to the application of effective safe harbors; - Detailed reporting on a jurisdictional level; - Substantial levels of reporting if CE-by-CE data points are required.	• We have included some additional comments on the existing transitional safe harbors and the potential introduction of permanent safe harbors below for your consideration.
Annex A1, Section 3.2	Jurisdictional exceptions	There does not appear to be a jurisdictional exception for the proposed QDMTT safe harbor. We note that the QDMTT administrative guidance[5] published on February 2, 2023, states that "*The Inclusive Framework will undertake further work on the development of a QDMTT Safe Harbour*". It is also regrettable that the administrative guidance on the design of a QDMTT has not been made available for public consultation, given the importance of the role that a QDMTT is expected to play in the overall architecture of the GloBE rules.	• We refer to our comments below on the QDMTT and also our comments in our Tax Certainty consultation response and its application as a permanent safe harbor on how the QDMTT should be designed. • In our view, it will be particularly important from a compliance perspective that the completion of Section 3 should not be required if the QDMTT safe harbor is available for that jurisdiction.
Annex A1, Section 3.2	Jurisdictional exceptions – permanent safe harbors	No permanent jurisdictional safe harbors are currently included in the GIR and we understand that work on the development of permanent safe harbors will be advanced in the coming months.	• Our members strongly recommend that the Inclusive Framework prioritizes the development of more permanent effective safe harbors, which would allow MNEs and tax authorities to focus on countries where there is an actual top-up tax amount at stake, which we expect will be in a

[5] OECD / G20, "*Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global AntiBase Erosion Model Rules (Pillar Two)*", 2 February 2023.

		On page 22 of the OECD safe harbor and penalty relief document[6], it confirms that simplified calculations can be performed on a jurisdictional basis where it states: *"The MNE Group would then be able to rely on that safe harbour when filing its GIR and calculating its ETR on a jurisdictional basis".*	limited number of jurisdictions for most MNEs[7]. While temporary safe harbors are useful for transition years, the temporary safe harbors do not provide meaningful long-term simplification as the data will be required for future periods. • Permanent safe harbors should be designed to apply on a jurisdictional basis, as this should ensure that the minimum effective rate of tax of 15% has been achieved for the given jurisdiction. Where possible, these safe harbors should be able to be prepared using existing data (e.g., financial accounts and CbCR data) similar to the approach taken in the design of the transitional CbCR effective tax rate safe harbor. • In our view, this is crucial to allow the Pillar Two project to remain targeted in nature and aligned with the policy intent of the proposal, as outlined in the October 2021 Statement. • While a transitional safe harbor exists based on CbCR data, we believe that the use of CbCR data on a more permanent basis could be a vital tool to reduce the scale and impact of additional Pillar Two compliance burdens (particularly as CbCR data is already subject to information exchange). • In particular, we believe that the CbCR transitional safe harbor could be adapted in order to be used on a more permanent basis, without giving rise to risks of revenue losses for jurisdictions.

[6] OECD/G20, "*Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)*", December 2022

[7] In a survey of *Business at OECD* (BIAC) Tax Committee members, 65% of respondents expected top-up tax liabilities in less than five jurisdictions, with 90%+ expecting top-up tax in less than 10 jurisdictions.

			• For the calculation of GloBE Income:
			
			  ○ The CbCR profit / loss could still be used as a proxy for GloBE Income. The CbCR profit is generally based on the consolidated pre-tax profit, which is a heavily scrutinized, audited and reliable number used to calculate the published ETR of a group.
			  ○ We also note that many of the GloBE Income adjustments result in a downward adjustment being made.
			  ○ For these reasons, our members believe that the CbCR profit is rather conservative measure and could therefore safely be used as a proxy for GloBE Income as a result.
			
			• To the extent it would help achieve agreement among IF members, we believe that tighter CbCR guidelines could be released by the OECD to ensure that CbCR data is gathered on a consistent basis across IF jurisdictions.
			
			• For the calculation of Adjusted Covered Taxes, we believe that MNEs would be able to manage a limited number of adjustments to the existing transitional CbCR effective tax rate safe harbor (e.g., the elimination of uncertain tax positions and undistributed reserves, recasting of deferred tax expense at 15% and the elimination of categories of DTL which could be subject to the recapture rules).
			
			• The rate of the simplified ETR calculation could remain at 15%, as there would be more safeguards than the transitional safe harbor.

			• We also believe that the "once-out, always out" approach that applies to the transitional safe harbors should not apply to any permanent safe harbor, as it is conceivable that an entity could inadvertently fall outside the scope of a safe harbor for a given year but generally qualify. • If these changes were adopted, our members believe that the CbCR safe harbor could be retained on a permanent basis, with minimal risk of any material amount of top-up tax not being captured. The expansion of the transitional CbCR safe harbor to apply on a permanent basis would, in our view, provide real simplification benefits for taxpayers trying to comply with the GloBE rules, while also allowing tax authorities to direct resources in a more targeted manner.
Annex A1, Section 3.2	Jurisdictional exceptions – permanent safe harbors	• In relation to the Routine Profits Test Safe Harbor, we note that a jurisdiction with a GloBE Loss would satisfy the safe harbor test but would still have an Additional Top Up Tax liability (including Article 4.1.5). • The rules for unclaimed accruals and those requiring the recapture of deferred tax liabilities could give rise to a top up tax liability under Article 4.1.5. We do not believe that this is the policy intent.	• On page 23 of the OECD safe harbor and penalty relief document[8], it is stated that *"further Agreed Administrative Guidance could be developed to allow MNEs to avoid undertaking the full loss computations for purposes of determining whether an Article 4.1.5 liability arises"*. • In this regard, we would welcome administrative guidance that provides that Article 4.1.5 (and Article 5.2.1) apply to Adjusted Covered Taxes before the overlay of the impact of any DTL recapture or unclaimed accruals. By doing so, this would preserve the operation of the DTL recapture and unclaimed accrual provisions (i.e., remove the DTL from Adjusted Covered Taxes) without triggering an adverse Additional Top Up Tax outcome.

[8] OECD/G20, "*Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)*", December 2022

Annex A1, Section 3.2.1	Safe harbor jurisdiction election	Annex A1, Section 3.2.1 does not appear to include any data entry point for details of the SBIE that forms part of the transitional CbCR safe harbor. It appears that this panel has been prepared to only capture the simplified effective tax rate calculation element of the transitional CbCR safe harbor.	• We would recommend that Annex A1, Section 3.2 is updated to allow an MNE to clarify which element of the transitional safe harbor is being claimed as the transitional CbCR safe harbor applies an "or" test: a) the MNE Group reports Total Revenue of less than EUR 10 million and Profit (Loss) before Income Tax of less than EUR 1 million in such jurisdiction on its Qualified CbC Report for the Fiscal Year; or b) the MNE Group has a Simplified ETR that is equal to or greater than the Transition Rate in such jurisdiction for the Fiscal Year; or c) the MNE Group's Profit (Loss) before Income Tax in such jurisdiction is equal to or less than the Substance-based Income Exclusion amount, for constituent entities resident in that jurisdiction under the CbCR, as calculated under the GloBE Rules.
Annex A1, Section 3.3.1	Top-up tax calculation	The description of the top-up tax in panel k is: [D] x [F] + [G] – [H]	• For the avoidance of doubt, we would recommend that the calculation is updated as follows: ([D] x [F]) + [G] – [H]
Annex A1, Section 3.3.1(a) Annex A1, Section 3.3.1(c)	Jurisdictional ETR – Financial Accounting Net Income or Loss Jurisdictional ETR – income tax expense in the financial accounts	The GIR requires the Financial Accounting Net Income or Loss in the financial accounts to be disclosed in the ETR Computation. The GIR requires the income tax expense in financial accounts to be disclosed in the ETR Computation.	• It is unclear to us why the income tax expense from the financial accounts needs to be disclosed. We note that this data is necessary for calculating the transitional CbCR safe harbor, however, this appears to be captured in a separate disclosure at Annex A1, Section 3.2.1.4. • When the availability of the transitional CbCR safe harbor has expired, the total income tax expense disclosure should not be relevant to the GloBE top-up tax liability calculation. We

			would therefore recommend that this data point is removed from the GIR. • Similarly, it is somewhat unclear to us why the Financial Accounting Net Income or Loss needs to be disclosed in panel 3.3.1(a), as it is a component of the calculation of the jurisdictional GloBE Income or Loss which is the amount used in the ETR calculation.
Annex A1, Section 3.3.1.2	Jurisdictional ETR – uncertain tax positions	Disclosure of uncertain tax positions	• We believe that uncertain tax positions in a current year should not be required to be reported. In this regard, the tax expense reported in Annex A1, Section 3.3.1.2(a) should be permitted to be reported net of uncertain tax positions, rather than requiring separate disclosure of uncertain tax positions (either item-by-item or in the aggregate). • Requiring any disclosure of uncertain tax positions 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 US Internal Revenue Service's "policy of restraint" concerning tax accrual workpapers). • We have a concern that the disclosure of uncertain tax positions could lead to jurisdictions requesting information which is not relevant to the Pillar Two GloBE calculation. • In line with our broader comments throughout this response, we believe that GIR disclosure requirements

			should be narrowly tailored for Pillar Two purposes, without mandating the disclosure of extraneous information.
Annex A1, Section 3.3.1.5	QDMTT	While we note that guidance on the design of a QDMTT has been released on February 2, 2023[9], our members have not had sufficient time to review the guidance in detail. We will therefore follow-up with comments and feedback on this guidance in due course. However, it appears that further administrative guidance will still be developed, including how QDMTT could function as a safe harbor. Until such guidance is released, in addition to further clarification about the interaction of QIIR, QDMTT, the GIR and safe harbors, it is very difficult to provide feedback on a QDMTT's role in the GIR.	• To be a QDMTT, we understand that the tax will need to remain consistent with the GloBE Model Rules (subject to any permissible differences in the calculation which are agreed by all IF members in administrative guidance). • In this regard, it is essential that any transitional and permanent safe harbors are included within the QDMTT provisions. It is therefore very concerning that this does not appear to be a mandatory requirement in the recently published additional administrative guidance. Given the expectation that QDMTTs will be widely introduced, allowing the option to include safe harbors in the design of a QDMTT will increase compliance burdens for MNEs and undermine the effectiveness of transitional and permanent safe harbors. • It is also regrettable that the administrative guidance on the design of a QDMTT has not been made available for public consultation, given the importance of the role that a QDMTT is expected to play in the overall architecture of the GloBE rules.
Annex A1, Section 3.3.2.2	Recapture mechanism	The requirement to recapture certain deferred tax liabilities will give rise to significant compliance burdens for MNEs. At present, it is somewhat unclear whether the deferred tax liabilities need to	• We believe that additional administrative guidance is needed to clarify what is meant by the term "category" in the Model Rules for DTL recapture for the purposes of identification and tracking.

[9] OECD / G20, "*Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global AntiBase Erosion Model Rules (Pillar Two)*", 2 February 2023.

		be tracked on a category basis (as noted in Article 4.4.4) or an individual item basis (as mentioned in paragraph 90 of the Commentary – page 105). For completeness, we note that the recapture formula is somewhat confusing, as it could be read as being circular in nature.	• As a simplification option, we would recommend that MNEs are provided with the option to identify and track recaptured DTLs on a per subcategory or line-by-line basis. • We would recommend that the formula is updated to make it clear that: [H] = [A] – [G], where [G] = [B] + [C] + [D] + [E] + [F]
Annex A1, Section 3.4	Constituent Entity reporting		• We refer to our comments above regarding our concerns with widespread CE-by-CE level reporting. • Where CE-by-CE reporting is required in more limited circumstances (e.g., cases where a GloBE top-up tax is due), we also have some additional feedback as follows:
Annex A1, Section 3.4	Constituent Entity reporting	Where there is a tax consolidation group in a given jurisdiction, the calculation of current and deferred taxes is managed at the level of the tax group, and not on a CE-by-CE basis. The GloBE rules already include an election to disregard transactions within a tax group and prepare the calculation on a group-wide basis.	• Where a tax consolidation group exists in a jurisdiction, and the MNE has elected to disregard transactions within the tax consolidation group for GloBE purposes, the tax group should be treated as one single CE for the purposes of Annex A1, Section 3.4.
Annex A1, Section 3.4.1 and Section 3.4.2	Disclosure of additions and reductions to GloBE Income and Adjusted Covered Taxes	Disclosure of separate additions and reductions made to GloBE Income and / or Adjusted Covered Taxes is extremely burdensome and, in many cases, would be meaningless due to accrual accounting.	• We recommend that this requirement is removed.

		To enable disclosures of additions and reductions separately requires a transaction-by-transaction level analysis to determine the sum of all additions and all reductions to each sub-step of the calculation. Some accounting systems are set up such that all items are mapped to one account and additions/reductions to that account are netted off. Without significant adaption to existing accounting systems, the separation of additions and reductions will need to be undertaken manually on an account-by-account basis. Further, in many accounting systems, additions and reductions in general ledger accounts are meaningless due to accrual accounting. For example, an accrual in one month is reversed in the next and that treatment is adopted throughout the annual reporting period until the expense or income is paid/received. That is, it is not as simple as adding all the debits and all the credits in the general ledger account to arrive at the additions and reductions as any accruals reverse in the following reporting period. For example, the journal entries for a dividend accrual in January but not paid until March would be: <u>January</u> Dr Accrued Income 100 Cr Dividend Income (100) *Accrue dividend income - January*	

		<u>February</u> Dr Dividend Income 100 Cr Accrued Income (100) *Reverse January accrual* Dr Accrued Income 100 Cr Dividend Income (100) *Accrue dividend income - February* <u>March</u> Dr Dividend Income 100 Cr Accrued Income (100) *Reverse February accrual* Dr Cash 100 Cr Dividend Income (100) *Record receipt of dividend* In this example the, the disclosure for Excluded Dividends based on debits and credits from the general ledger account using accrual accounting would be: Additions 200 Reductions (300) However, to reflect the true result, the accrual and the associated reversals should be ignored. This would require a manual adjustment which is impossible for the volume of transactions that would be required to be accounted for.	

Annex A2, Note 2.2.1.1	Constituent Entities and members of JV Groups	We note that there appears to be two typos in Note 2.2.1.1	• References to rows 2.1.1.2 should be updated to 2.2.1.2
Annex A2, Note 2.1.1.11	Constituent Entities and members of JV Groups	We note that there appears to be a typo in the title of Note 2.1.1.11	• We recommend that this is updated to read Note 2.2.1.11
Annex A2, Note 3.2.1(a)	Safe harbor jurisdiction election	We note that there appears to be a type in the Note 3.2.1(a)	• The reference to Table 3.1.2 should be updated to Table 3.2.1 • For greater certainty, we would also recommend that it is made clearer that an election is made by selecting the relevant option(s) in Table 3.2.1 (i.e., no separate election needs to be filed).
Annex A2, Note 3.2.1	Safe harbor jurisdiction election	A definition for the term Qualified Financial Statements is not included within the Document.	• We recommend that an appropriate cross-reference or definition is added when the notes to the GIR are being finalized. • For greater certainty, it would also be helpful if it could be clarified that Table 3.4.5 only needs to be completed where the separate financial accounting standard differs from the UPE accounting standard.
Annex A2, Note 3.2.1.2	Safe harbor jurisdiction election	A definition for the term Qualified CbC Report is not included in the Document.	• We recommend that an appropriate cross-reference or definition is added when the notes to the GIR are being finalized.
Annex A2, Table 3.2.1 and 3.2.2	Jurisdictional exceptions		• We believe that it would be helpful if a list could be included in Annex A2 of the information that MNEs need to provide for the purposes of transitional and permanent safe harbors.

Annex A2, Table 3.4.1(d)	Adjustments to the GloBE Income of the UPE under Article 7.1 and 7.2	It is unclear whether Table 3.4.1 needs to be completed when a JV is a flow-through entity which is deemed to be a UPE.	• Clarifications in the note in Annex A2 would be helpful.