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
2 rue André-Pascal
75775, Paris, Cedex 16, France
Submitted by email: taxpublicconsultation@oecd.org

Re: *Business at OECD* (BIAC) comments to OECD's Public Consultation on Tax Certainty for the GloBE Rules

Dear Secretariat Team,

Thank you for the opportunity to comment on the public consultation document "Pillar Two – Tax Certainty for the GloBE Rules" (the "Document"). The OECD two-pillar solution will result in fundamental changes to the international tax system including the nature of interactions between taxpayers and tax authorities and will give rise to substantial new compliance burdens for MNEs. The core goal of the two-pillar solution is to stabilize the international tax system, and in this context, *Business at OECD* (BIAC) is supportive of the OECD Secretariat's efforts to advance Pillar Two of the project.

However, stabilization of the international tax system will not be achieved without appropriate tax certainty mechanisms. Indeed, 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. The risk that the GloBE rules will result in additional instability requires commitment by the Inclusive Framework (IF) to implement the rules into local legislation in a consistent and coordinated fashion, as well as a commitment to effective dispute prevention and resolution mechanisms.

Dispute prevention must be a priority – limiting the risk of disputes arising in the first instance. The level of complexity and compliance associated with the GloBE rules is significant for both MNEs and tax administrations. Ensuring the practical operation of the rules is manageable and administrable is the most fruitful first step in mitigating the potential for disputes.

We therefore appreciate the launch of this public consultation and would welcome the opportunity to engage further with the Secretariat as the proposals are developed in the coming months.

Of concern is the fact that the proposals outlined in the Document are conceptual in nature with no concrete timeline for finalizing agreement on a comprehensive suite of dispute resolution mechanisms. Whilst we appreciate the opportunity to participate in the formulation of dispute prevention and resolution approaches, we are concerned about the level of work yet to be done to make any real progress on identifying and agreeing solutions among the IF members. Progress on this important area must be prioritized immediately, particularly in light of the fact that jurisdictions are moving ahead with the design and implementation of the rules domestically.

We believe there are three areas which have the highest opportunity for dispute prevention and resolution, where further work should be prioritized:

1. **Permanent safe harbors.** The highest opportunity for dispute prevention is to provide a framework which can quickly and easily focus compliance and administration efforts on the jurisdictions where a GloBE liability is relevant. This is best achieved through a targeted permanent safe harbor which operates in a similar fashion to the Transitional CbCR Safe Harbor – i.e., the operation of the safe harbor is to apply an appropriate set of criteria to focus the application of the GloBE rules to only those countries where a GloBE liability is possible. This would enable compliance and administration activities and resources to be targeted towards those countries where there is a risk of undertaxed profits. Currently, the most significant permanent safe harbor being referenced is the QDMTT. We note that QDMTT administrative guidance[1] was released on February 2, 2023, however, this guidance states that further work will be undertaken by the IF on the development of a QDMTT safe harbor. It appears that the additional administrative guidance provides a framework under which jurisdictions could design a DMTT that would be considered to "qualify". However, our members have not had sufficient time to review this guidance in detail. We will therefore follow-up with comments and feedback in the coming days. 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.

   It is crucial that a precise and thorough definition of a QDMTT is provided in administrative guidance, as this will assist the peer review process, improve confidence in QDMTT functioning as a safe harbor and ultimately reduce disputes. Optionality in the design of a QDMTT should be limited to issues agreed by IF members in the administrative guidance. We believe that this is essential to ensure a consistent application of the rules. Development of additional permanent safe harbors would provide additional opportunities to both simplify compliance and administration and to narrow the potential for future disputes.

2. **Unilateral taxpayer / tax authority disputes.** One of our main concerns with the Document is the predominance of focus that is placed on how jurisdictions would engage with multilateral dispute resolution processes, with limited focus placed on the resolution of disputes between MNEs and a single tax authority. We believe the potential for disputes over the interpretation and administration of the GloBE rules by UPE jurisdictions in applying the income inclusion rule (IIR) (i.e., cases where the dispute involves only a single jurisdiction, rather than being a bilateral dispute between multiple jurisdictions) will be high. Given the nature of the GloBE rules and the common approach there must be appropriate mechanisms to provide tax certainty and dispute prevention/resolution even where the dispute does not involve multiple implementing jurisdictions.

3. **Multilateral dispute resolution.** Whilst many disputes are expected to be unilateral with the UPE jurisdiction, we agree that multilateral dispute resolution mechanisms will also be required. It is challenging to predict what type of disputes will materialize in practice, however, we believe that the most common multilateral disputes will relate to under-taxed profits rule (UTPR) claims being asserted by UTPR jurisdictions. Our members believe that the most effective method of providing for resolving Pillar Two multilateral disputes would be to introduce a Multilateral Convention (MLC).

[1] 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.

In Appendix I, we have included a more detailed table of comments on key dispute prevention and resolution features which we believe will be important to ensure that appropriate levels of tax certainty are achieved. In Appendix II, we have also included illustrative examples for some of the specific questions in the Document.

The *Business at OECD* (BIAC) Tax Committee wishes to express our thanks to the Secretariat and to WP11 for the opportunity to engage on this important issue, and fully supports the continuing work on Pillar Two. As Pillar Two implementation starts to take shape in 2023, we believe that the development of effective dispute prevention and resolution mechanisms is critical, and that significant work should be undertaken between now and implementation to ensure that Pillar Two achieves its stated goal of implementing an administrable global minimum tax without adding double taxation burdens. Further work on tax certainty should also continue beyond the implementation of the GloBE rules.

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 of any questions that arise from our general and specific comments provided, and 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)

Appendix I

Our detailed comments are as follows:

Ref	Topic	Issue	Recommendation
General	Harmonized timing of implementation	An IIR or UTPR in other jurisdiction may be applied before the IIR of a UPE jurisdiction takes effect, due to different fiscal periods and commencement dates of the relevant legislation.	• We recommend that the timing of commencement of application of the IIR, UTPR, and QDMTT should be internationally harmonized in a manner that takes account diverse fiscal years of MNE Groups in each jurisdiction. • By way of example: o The IIR of jurisdiction A is expected to take effect for the fiscal year beginning on or after April 1, 2024. o The IIR and UTPR of jurisdiction B applies from January 2024. • In this scenario, our members are concerned that the IIR/UTPR of jurisdiction B will be imposed before the IIR of jurisdiction A comes into force, causing a disproportionate compliance burden for MNEs. • In these cases, we recommend that jurisdiction B does not apply the IIR and UTPR to MNE Groups whose UPEs are located in a jurisdiction that is also introducing an IIR in 2024 (due to different fiscal years and commencement dates of relevant legislation). • We also recommend that the UTPR is introduced one year after the implementation of the IIR. We note that this

			recommendation is supported in the OECD Safe Harbor and Penalty Relief document[2] where it states in para 32: *"The purpose of the Transition Period is to provide relief to MNE Groups in respect of their GloBE compliance obligations during the initial years that the rules are being implemented. In practice, it is expected that MNE Groups with a Fiscal Year that begins in 2024 will be subject to the IIR in that Fiscal Year and the UTPR one year later in the Fiscal Year beginning in 2025".*
Section 1, para 1 – 2	Ensure entire GloBE Model Rules (including commentary and administrative guidance) have legal effect in a jurisdiction	The common approach and the level of certainty experienced by MNEs, relies upon the consistency of application of the GloBE rules.	• It is therefore essential that all aspects of the GloBE Rules are incorporated fully into local legislation including, for example, the rules related to excluded income in Article 7 of the Model Rules (which are particularly important for MNE groups headed by flow-through entities). If gaps are permitted, we believe that the rules would likely become unmanageable. • It will also be important to clarify how updates to the Model Rules, Commentary and administrative guidance should be addressed in local legislation. We believe that disputes will arise where jurisdictions are permitted to make assessments based on different versions of the Model Rules, Commentary and administrative guidance. A coordinated approach is needed and the review of updates to local legislation should also be incorporated into the peer review process. • Similarly, it will also be necessary for the published Commentary and administrative guidance to be aligned with the Model Rules, as we note that this could otherwise give

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

			rise to issues in certain jurisdictions (e.g., Australia) where local courts have made it clear that they will only refer to guidance material if the law is unclear.
Section 1, para 2	Ensure consistency of legislation with the GloBE Model Rules	Divergences in the text of domestic legislation from the GloBE rules will create significant interpretation and compliance challenges for MNEs[3]. For example, we note that the draft UK income inclusion rule (IIR) legislation already demonstrates that some jurisdictions may depart significantly from the wording in the Model Rules. The UK draft IIR, specifically the Shipping Exemption at sections 35 – 37, is an illustration of where the ordering and wording is different from the Model Rules and may include new terms, e.g., 'ancillary international shipping factor' (section 37(4)) and 'ancillary international shipping profit cap adjustment' (section 37(8)). Despite such changes, it appears that the sections may work as intended by the Model Rules. However there seems to be no equivalent of Art 3.3.3(e) of the Model Rules which applies in respect of investment income as a component of qualified ancillary international shipping income.	• We appreciate that differences in design and drafting may be needed for a variety of reasons including, but not limited to, ensuring the legislation fits the constitutional and legislative requirements of the particular jurisdiction or to include material not in the Model Rules but included in the Commentary. However, we believe that it is crucial that the legislation introduced is complete and remains consistent with the outcomes envisaged in the Model Rules. • The greater the volume of differences introduced to domestic legislation, the more pressure that will likely be placed on the peer review process. It will be important to understand if differences of such a nature would have an impact on whether the legislation is 'qualified' or not. If it is assumed that, notwithstanding certain drafting differences the legislation is still considered to be qualified, it will be important to consider what dispute resolution mechanisms will be available in cases which go beyond issues of 'interpretation' (e.g., where there are omissions, or different wording compared to the Model Rules). Greater divergence from the text of the Model Rules will also make it more challenging for administrative guidance and Commentary to have legal effect.

[3] Similarly, the ability to introduce anti-abuse measures (e.g., GAARs) into the domestic legislation implemented GloBE rules should be discouraged to ensure consistency of application. To the extent any measures of this kind are needed to address specific issues, they should be agreed at IF level and introduced via agreed administrative guidance.

Section 2.1, para 5	Additional administrative guidance	Given the complexity of the rules, we expect that issues requiring guidance will continue to surface over time as the rules begin to be applied in practice.	• We understand that additional administrative guidance could be developed in future, and we welcome this approach. We strongly recommend that a program of future administrative guidance is developed in conjunction with MNEs to identify priority areas to support certainty. • Where guidance is likely to have an impact on a large number of taxpayers, we believe that taxpayers should be given an opportunity to provide comment and this feedback should be taken into account by the IF prior to any guidance being released in final form.
Section 2.1, para 9 – 10	Ability for an MNE to refer matters for guidance	Limiting the ability of an MNE to make an application for guidance by requesting that a jurisdiction raises the issue with the IF would limit the ability of the MNE to seek resolution of the dispute through administrative guidance if the jurisdiction concerned does not agree to make the application. Without this ability to make an application for guidance, there is a risk that MNEs could be "held hostage" where a jurisdiction does not wish for its interpretation to be challenged.	• We agree that the referral of issues of interpretation (e.g., what is meant by "*in preparing* Consolidated Financial Statements' - Article 3.1.2 of the Model Rules – emphasis added) to the IF on BEPS is necessary, however, we strongly believe that these referrals should also be able to be made by either an MNE or a jurisdiction which is party to a dispute.
Section 2.1, para 6 – 8	Use the peer review process to provide certainty over the order of the rules	Each of the points above should be considered as part of the peer review process. Through this process, clarity can be provided regarding whether or not a jurisdiction has introduced an IIR, an under taxed profits rule (UTPR) and/or a domestic minimum top-up tax (DMTT) which are considered to be "qualifying" for GloBE purposes. This is crucial to the smooth and effective functioning of the rules globally.	• To provide certainty on interpretative issues, taxpayers need to be able to understand which jurisdiction's framework is applicable. We believe that taxpayers should receive assurance that, where either a QIIR or a QDMTT applies, a jurisdiction may not levy the UTPR in the event that they disagree with the application of the rules in the QDMTT or QIIR jurisdiction. These types of challenges should be raised in the peer review process and addressed by all IF members in a coordinated manner (rather than at taxpayer-level). We believe that this is supported by the commitment provided

			in the OECD / G20 October 2021 Statement[4] on the two-pillar solution where it states: *"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 harbours"* • We would recommend that a list of QIIRs, QUTPRs and QDMTTs is developed to provide clarity for MNEs and other tax authorities in respect of which jurisdictions rules should apply. Given the importance of this topic, we are concerned that there is a lack of detail currently on when the peer review process will begin and how long it will take to review each jurisdiction's legislative proposals. It would be helpful if an expedited initial review of all legislation could be completed prior to the relevant legislation taking effect. We appreciate that a more thorough review may need to be undertaken at a later stage to review how the legislation is working, however, we believe that completing an initial assessment will be necessary in helping the implementation of GloBE to get off to as smooth a start as possible. • A peer review framework or set of administrative guidance should also be provided to clarify the treatment that should be applied when a jurisdiction which had a QIIR or QDMTT amends its legislation or fails to introduce a required amendment to its legislation, and there is then uncertainty whether its "qualified" status has been lost.

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

			• In these circumstances, we would also recommend that a mechanism is developed to encourage jurisdictions to re-align their legislation with the GloBE rules where divergences arise and there should be consequences for not doing so. For example, where jurisdictions apply GloBE in a manner inconsistent with the Model Rules, information sharing of Pillar Two returns or other related information should be halted until the jurisdiction's rules achieve a "qualified" peer review status. • If jurisdictions lose their "qualified" status, the impact of this change should only be applied prospectively for MNEs (i.e., the loss of a "qualified" status should not have an impact on previous periods and returns filed). • For completeness, we would also recommend that assessments of whether tax credits should be treated as a Qualified Refundable Tax Credit should be completed via a peer review process to limit uncertainty and differences of interpretation.
Section 2.2, para 11 – 12	Utilize common risk assessments and coordinated compliance	A coordinated compliance mechanism could be a useful tool for providing assurance to in-scope companies on the methodology used for the computation and to ensure that all top-up tax collecting jurisdictions share the same understanding. We do however note that the need for coordinated compliance is linked to the availability of safe harbors and how strictly jurisdictions respect the qualified status of another jurisdiction's legislation (e.g., QIIR status).	• While our members would therefore support the use of an ICAP-type mechanism, we do note that ICAP is a resource intensive process that requires agreement of relevant tax authorities and that ICAP does not provide an MNE group with advanced legal certainty necessary to prevent disputes. We would have some concerns that jurisdictions with larger economies could potentially be inundated with requests, resulting in limitations on the number of cases that could be managed. In contrast, smaller economies could be denied access to ICAP in situations where the other jurisdiction deems the amount of double taxation to not be significant.

			• A more targeted or streamlined process may need to be developed as a result.
Section 2.3, para 13 – 14	Binding certainty mechanisms	We note that very limited detail has been provided on the use of binding certainty mechanisms for GloBE purposes, which suggests that there may be limited appetite for this dispute resolution mechanism among IF members. However, we believe that a form of advance certainty process could provide significant benefits for taxpayers and tax authorities (particularly where the other dispute prevention measures above are not utilized), as it would allow all parties to agree key aspects of the GloBE computation and potential simplifications up-front. We do however note that the approaches described in Section 2.3, para 13 are not available in all jurisdictions currently or if they are, the scope may not be broad enough to cover Pillar Two.	• We would therefore support the development of a common-standard for a GloBE APA-like mechanism. • We believe that taxpayers should have options to obtain certainty, within a pre-defined timescale, directly from the tax authorities either: i) In the case of a QIIR or QDMTT, directly from the primary taxing authority; or ii) In the case of UTPR, from an ad hoc panel of UTPR jurisdictions. • This certainty should be binding on all other jurisdictions in order to prevent double taxation from the outset. The advance certainty / APA-like mechanism could leverage some of the features of the mechanisms being proposed for Pillar One related issues. • Examples where this could be particularly useful would include cases where an element of judgement is required which has an impact on a number of jurisdictions. For example, the allocation of tangible assets and employee numbers / costs can have an impact on the calculation of both the UTPR and the substance-based income exclusion. Other examples could potentially include where the UPE jurisdiction does not apply a QIIR and there are multiple IPEs in the corporate structure, as this could allow an MNE to clarify which entities are covered by an IIR with the relevant jurisdictions involved.

			• Where agreement cannot be reached on an issue within a pre-defined timescale, we believe that the relevant issue should be able to be referred to the IF to be reviewed and clarified by way of additional administrative guidance.
Section 3.1, General	Scope of dispute resolution mechanisms	While we do believe that the introduction of the measures above would greatly reduce the volume of potential disputes, it is inevitable that disputes will arise over time. In our view, it is therefore important that dispute resolution mechanisms are introduced which appropriately address the risk of double taxation arising either through taxation of the same amount by multiple jurisdictions or through assessment by a single tax authority inconsistent with the GloBE rules themselves. These should be broadly applicable to cover any scenario involving taxation outcomes which are inconsistent with the GloBE rules and guidance. In this regard, we note that the nature of the disputes covered is discussed in Section 3.1.3 of the Document and that this discussion starts broadly by stating that "*any difference of interpretation or the application of the GloBE Rules between jurisdictions*" could be covered. However, the Document then continues to discuss ways that the scope could potentially be narrowed.	• Pillar Two represents a fundamental change to existing international tax systems and it is therefore challenging to predict where exactly dispute resolution mechanisms may be required (particularly as the development of key aspects of the administration of the rules is ongoing). However, we expect that broadly applicable dispute resolution mechanisms will be needed.
Section 3.1.3, para 21 – 25	Unilateral dispute resolution mechanisms	The Document appears to have been prepared to address disputes between jurisdictions and does not cover options for taxpayer – tax administration related disputes. However, The MAP process was historically aimed at addressing disputes arising	• We therefore believe that there is merit in developing a common mechanism under which an MNE could challenge the UPE / IPE jurisdiction's interpretation or implementation of the IIR rules. We also believe that it would be important to consider whether:

		from bilateral treaties, whereas the GloBE rules will be adopted into domestic legislation providing a right to tax for that jurisdiction. We expect a core area of disputes will be where there is a difference of view between a taxpayer and an individual country and where another country is not particularly interested or invested in the outcome. A limitation of a MAP process is that if, for example, an MNE has a dispute with a UPE jurisdiction, the MNE would need to get one of the UTPR [or QDMTT] countries to facilitate a bilateral dispute resolution process. Given the (reasonable) expectation of the UTPR country would be that resolution of that dispute would not change their tax collections, we cannot see a UTPR country being willing to devote resources to resolving what is a dispute between an MNE and another country. Accordingly, we cannot see that an MNE would have the ability to challenge the application of the GloBE by the QIIR jurisdiction other than via its normal domestic process. As noted above, we also have significant reservations over the legal effect of the commentary and administrative guidance in all jurisdictions and the ability of an MNE to seek resolution or guidance in circumstances where that MNE believes the jurisdiction in question is not administering its legislation consistent with the GloBE rules, Commentary and administrative guidance.	i) A feedback loop would be created to the OECD and / or IF and whether there would be any implications for the "qualified" status of the relevant regime (e.g., IIR etc.); ii) The GloBE Model Rules, Commentary or administrative guidance would be updated; iii) A body of additional administrative guidance would be developed as disputes are resolved to enable other jurisdictions to see the outcomes of similar disputes (i.e., to help the Model Rules be applied consistently). Each of these factors would likely have an impact on the consistency of outcomes in different jurisdictions.

Section 3.1.3, para 25 – 28	Multilateral dispute resolution mechanisms	Multilateral dispute resolution mechanisms will also be needed, particularly in the context of the UTPR. We are concerned that the UTPR will result in the potential for a number of jurisdictions to seek to tax a single item of income. As each jurisdiction could have their own interpretation of the relevant facts, relevant law, interactivity with domestic law, and motivations, the potential for assessments well in excess of 15% of any item of income is possible. A key design element of the GloBE dispute resolution rules must be to prevent or mitigate double taxation.	• We therefore believe that any dispute resolution mechanism should bring each of the affected jurisdictions to the table to resolve the dispute with a view to ensuring that no more than a single 15% tax is levied on any particular item of income. • Our preference would be for the dispute resolution mechanism to be binding as we have concerns that the use of non-binding multilateral MAP would be unlikely to be effective, particularly in a UTPR context where numerous parties are involved. Given the challenges in getting all of the jurisdictions to approach things in the same way and the challenges in finding practical dispute resolution mechanisms (particularly when the dispute is not bilateral), the IF could agree parameters that would encourage timely and constructive dispute resolution. • We also believe that access to dispute resolution should not be predicated there being on double taxation of the same item of income. In many instances, an interpretation of a rule by one jurisdiction may result in a single instance of taxation where a transaction, under another jurisdiction's view, would not have been taxable. We have provided some examples of these cases in Appendix II. We therefore believe that the approach recognized in the 1963 OECD Model Tax Convention and most bilateral tax treaties – that MAP is available where a taxing state exercises a taxing right in contravention of the treaty – should be adapted / applied for GloBE disputes (i.e., actions by a state in contravention of the GloBE Model Rules).

Section 3.2.1, para 30 – 32	Multilateral Convention (MLC)	The use of an MLC could also allow for greater consistency in the rules being applied by jurisdictions. In this regard, we note that concerns have been raised publicly that the UTPR could breach the provisions of existing double tax treaties. The fact that these concerns have been voiced consistently suggests that future disputes are likely to arise where UTPR assessments are imposed on MNE groups. In the event that many treaties require updates to bring the UTPR into compliance with existing treaty obligations, an MLC would not only be appropriate but essential for an effective and successful implementation of the GloBE rules.	• In terms of how multilateral dispute resolution mechanisms could be introduced, our members have indicated a strong preference for the development of a GloBE MLC. • We recognize that it may take time to develop and ratify an MLC which includes dispute resolution mechanisms, and that public consultation on any proposed text would be required. In the intervening period, it is important that other dispute resolution mechanisms are utilized. We have therefore provided some feedback on some of the other options mentioned in the Document below.
Section 3.2.1, para 33 – 35	Competent authority agreements under the MAAC	While we appreciate that there may be benefits to relying on competent authority agreements under the MAAC, we believe that there are some challenges that would need to be addressed in order for the use of the MAAC to be effective in a Pillar Two context. In order to rely on MAAC, we note that there is a need for the dispute to be bilateral in nature and also for a double taxation outcome to arise. However, as noted elsewhere in our response, we believe that it will be important that dispute resolutions for Pillar Two are broader and allow a challenge to be made to a single taxing authority and also for challenges to be permissible when no double taxation outcome arises. We would also have concerns that the tax authorities would have full discretion whether to	• If competent authority agreements under the MAAC are to be used, we would recommend that the IF members provide a commitment that they will engage in this process where the dispute relates to the interpretation or implementation of the GloBE rules.

		accept the submission. This concern is also reflected in Section 3.1.4, para 27 of the Document where it states that *"competent authorities could be empowered to eliminate those inconsistent outcomes by agreeing on a common interpretation".*	
Section 3.2.4, para 39 – 41	Dispute resolution provision in domestic law	Similar to our comments on the use of the MAAC above, we agree that it could be helpful if dispute resolution mechanisms agreed at IF level were incorporated into the domestic legislation of each jurisdiction that implements the GloBE rules. These dispute resolution mechanisms should address tax authority-tax authority disputes and also taxpayer-tax authority (unilateral) disputes.	• In the absence of an MLC, it would be important that the dispute resolution mechanisms added to domestic law are consistently applied by each jurisdiction. As a result, this would likely be another element that would need to flow into the peer review process. • Consideration would need to be given to how the dispute resolution mechanisms were operating in practice and how the provisions interact with other aspects of the relevant domestic legislation (e.g., could other aspects of domestic legislation override the dispute resolution mechanism) would need to be considered as part of this process. • It would also be necessary for there to be a mechanism to encourage jurisdictions to ensure that their dispute resolution measures are effective, including consequences if this is not the case.

Appendix II

Responses to questions for further input and public consultation (Section 4 of the Document)

Section 4, para 45 (a): *Have you identified possible scenarios where two (or more) jurisdictions implementing the GloBE Rules could interpret or apply the rules in a different manner, despite the GloBE Model Rules, Commentary, future Administrative Guidance and the multilateral review process (qualified rule status)? If yes, could you describe such scenarios?*

Response:

As a general comment, we expect that, where the UPE is in a jurisdiction with a QIIR, the most common disputes will be between the UPE jurisdiction and the QDMTT jurisdiction. These disputes could arise due to transfer pricing related issues, but also where a tax authority takes a different position on the treatment of an income or expense amount for accounting purposes (as this would flow through to the calculation of GloBE Income).

It may also be the case that a UTPR jurisdiction seeks to assert that a regime is not "qualifying" (e.g., a DMTT or an IIR) in an attempt to make the top-up tax liability subject to the UTPR.

We have also included below some further examples. Please note that this an illustrative and non-exhaustive list:

Example 1:

- YCo is located in jurisdiction A which has a QIIR.
- YCo has a subsidiary, XCo which is located in jurisdiction A.
- XCo merges with ZCo in a transaction which, under the rules of jurisdiction A, constitutes a GloBE Reorganization.
- YCo has a subsidiary in jurisdiction B with a small staff and fixed assets.
- Jurisdiction B asserts that under its legislation, the merger of XCo and ZCo was not a GloBE Reorganization that it should be able to assert taxing rights because Jurisdiction A failed to do so.
- Jurisdiction B asserts that Section 2.5.2 of the GloBE Model Rules do not apply because Jurisdiction A did not assert its right to tax under its QIIR.

Example 2:

- When a Constituent Entity is carrying on a business, interest earned which is incidental to the active business may be treated as active income under domestic legislation.
- This interest income would be considered to be passive income under the GloBE Model Rules.
- The draft UK Pillar Two legislation introduced a definition for mobile income, which includes interest and treats interest or interest equivalents in a similar manner as the GloBE Rules.
- This is an additional example of divergences in domestic legislation which seeks to implement the Pillar Two rules. As more jurisdictions introduce GloBE, these differences could expand rapidly.

Example 3:

- Jurisdiction A has introduced an IIR and a QDMTT.
- Top-up tax is collected under either the QDMTT or the IIR (e.g., a POPE owns an interest in a low-taxed Constituent Entity in another jurisdiction).
- If the QDMTT and/or the IIR deviates from the GloBE Model Rules, will the domestic legislation or the GloBE Model Rules prevail in the case of a dispute (e.g., a tax treaty prevails over domestic legislation)?

Example 4:

- Jurisdiction A is allocated and collects top-up tax under its UTPR legislation in respect of a low-taxed jurisdiction B.
- If the UTPR provision is not a "qualifying" UTPR, how will the tax collected be characterized (e.g., it is unlikely to be a Covered Tax or CFC).
- This could result in double taxation if the full amount of top-up tax due is otherwise collected by "qualifying" UTPR jurisdictions.

Section 4, para 45(b): *Double taxation could arise when two implementing jurisdictions impose Top-up Tax with respect to the same item of GloBE Income because of different interpretations or applications of the GloBE Rules. Have you identified any instances where different interpretations or applications of the GloBE Rules should be addressed by a dispute resolution mechanism, even if the MNE Group has not suffered double taxation?*

Response: As an initial comment, common examples that require dispute resolution where no double taxation is immediately suffered would include scenarios where the taxpayer/(s) in question are in a carry forward tax loss position or the dispute relates to a GloBE tax base/carrying amount.

We have also included some further examples below. Please note that this is an illustrative and non-exhaustive list:

Example 5:

- The UPE of an MNE is located in Jurisdiction A, which has implemented the QIIR.
- The MNE owns interests in Constituent Entities in Jurisdiction B, a low-tax jurisdiction, and Jurisdiction C.
- Jurisdiction B introduced a QDMTT regime, and Jurisdiction C introduced a QUTPR regime.
- As a result, the UPE has reported no Top-up Tax with respect to its holdings in Jurisdiction B.
- It may be determined that the QDMTT in Jurisdiction B is a non-qualified DMTT regime and there is a shortfall in top-up tax collected as a result.
- The UPE would need to collect the additional Top-Up Tax.
- However, Jurisdiction B still views the domestic regime introduced as being compliant with the Globe Rules.

Example 6:

- Jurisdiction A treats a tax credit as being a Qualified Refundable Tax Credit in computing the QDMTT.

- However, another jurisdiction could take a position that the tax credit does not meet the definition of a Qualified Refundable Tax Credit under its QIIR legislation.

Section 4, para 45(c): *Have you identified any other options that could be explored to achieve tax certainty for the GloBE Rules?*

Response:

(1) There is a need for dispute resolution instruments to be in place before the substantive enactment of domestic GloBE rules. As noted in the main body of our response above, it is not ideal to implement rules which have potential to result in double taxation without having a sufficient dispute resolution network in place.

One option could be to consider introducing a rule that would prevent the collection of taxation, resulting in double taxation, until there is an effective MLC or treaty mechanism in place between the countries involved.

(2) As noted above, the development of a common GloBE standard will likely be very difficult due to (i) different accounting standards, and (ii) differences in the concept of materiality meaning that there is significant scope for different outcomes based on the application of the same tests.

One option could be to consider a rule that requires tax authorities to resolve differences in treatments before issuing amended assessments or collecting an amount of tax which would result in double taxation. We believe that taxpayers should not have to be subject to double taxation before having the matter resolved. Revenue authorities should be required to resolve the matter before collecting tax.

(3) Requesting MAP does not impose an obligation upon the tax authority to accept the request. If there is a GloBE specific or domestic law dispute resolution clause, then consideration should be given to mandating the acceptance (and resolution) of the request, and / or that collection of tax cannot occur until matter potentially giving rise to double taxation is resolved.

(4) We would recommend that a list of QIIRs, QUTPRs and QDMTTs is developed to provide clarity for MNEs and other tax authorities in respect of which jurisdictions rules should apply. It would be helpful if an expedited initial review of all legislation could be completed prior to the relevant legislation taking effect. We appreciate that a more thorough review may need to be undertaken at a later stage to review how the legislation is working, however, we believe that completing an initial assessment will be necessary in helping the implementation of GloBE to get off to as smooth a start as possible.