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Comments on the OECD Global Anti-Base Erosion (GloBE) Proposal under Pillar Two

To: Organization for Economic Cooperation and Development – International Co-operation and Tax Administration Division, Centre for Tax Policy and Administration

By e-mail: taxpublicconsultation@oecd.org

From: Foglia & Partners

Re: Comments on the Global Anti-Base Erosion (GloBE) Proposal under Pillar Two

Date: 2 December 2019

Ladies and Gentlemen,

We appreciate the opportunity to submit these comments on behalf of Foglia & Partners on the public consultation document "*Global Anti-Base Erosion Proposal ("GloBE") – Pillar Two*" ("**Consultation Document**") released by the Organisation for Economic Cooperation and Development ("**OECD**") on 8 November 2019 and to continue to contribute to the ongoing global discussion of these important tax policy matters.

In these comments, we focus first on the overall proposal under Pillar Two ("**Proposal**" or "**GloBE**") providing general comments, and then turn to the specific substantive topics to be addressed according to the Consultation Document with particular regard to the "income inclusion rule".

In order to facilitate the analysis of our comments, please find here below a table of contents:

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1. Foreword and general comments on the Consultation Document

The GloBE approach stems from the OECD work program released on May 31, 2019, entitled "*Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising From the Digitalisation of the Economy*" and is aimed at developing, under the scope of Pillar Two, a co-ordinated set of rules to address ongoing risks for structures that allow multinational enterprises ("**MNEs**") to shift profit to jurisdictions where they are subject to no taxation or very low taxation[1].

As expressly acknowledged in the Consultation Document[2], as with the other proposal formulated under Pillar One, GloBE represents a substantial change to international tax architecture. Indeed, acting either on a domestic or an international level, the Proposal includes two specific domestic rules and two tax treaty amendments which are presented as the "four components" of the GloBE formula aiming at ensuring minimum global taxation[3]. These rules include:

- an **income inclusion rule** ("**IIR**"), which could supplement controlled foreign company ("**CFC**") rules in the various jurisdictions[4], allowing countries to tax income from branches or controlled entities located abroad if said income was not subject to minimum effective taxation;

- an **undertaxed payment rule** ("**UPR**") that denies deductions or permits source-based taxation (including withholding taxes) for payments made to related parties if those payments were not subject to minimum taxation;

- a tax treaty **switch-over rule**, which would allow a country to switch from exemption to a credit method when profits attributed to a permanent establishment ("**PE**") or derived from immovable property (which is not part of a PE) are not subject to minimum effective taxation, and

- a **subject to tax rule**, which would grant or deny tax treaty benefits if an item of income was not subject to tax at a minimum rate.

While the first pair of rules would require domestic implementation, the third and fourth

[1] Please refer to paragraph 1, page 5, of the Consultation Document.

[2] Please refer to paragraph 7, page 6, of the Consultation Document.

[3] Please refer to paragraph 5, page 6, of the Consultation Document.

[4] Please refer to paragraph 10, page 29, of the Consultation Document.

would require modification of the existing tax treaty network for those cases where neither a switch-over nor a subject-to-tax clause has already been introduced.

The Consultation Document focuses and requests input only with respect to the IIR, the first component of the Proposal, and namely on three technical issues:

- Tax base determination[5] – suggesting the use of financial accounts as a starting point for determining the tax base under GloBE, the Consultation Document requests, *inter alia*, comments and input with regards to differences that commonly arise between tax base and financials;

- Blending[6] – to the extent that an MNE can combine high and low-tax income from different sources to determine its effective tax rate ("**ETR**"), the Consultation Document proposes three different blending options to address the issue (i.e. "worldwide", "jurisdictional" and "entity" blending approaches);

- Carve-outs and thresholds[7] – the Consultation Document calls for exploration of possible approaches for limiting the application of the GloBE proposal in terms of carve-outs, thresholds and exclusions.

As a first general remark, we would like to underline that – in our opinion – the strategy adopted in the Consultation Document, which only requests comments on certain aspects of the IIR, will mean that the handling of the other three components of the GloBE proposal (i.e. undertaxed payment rule, switch-over rule and subject to tax rule) will be deferred, potentially leading to inconsistencies and inhomogeneity in the final GloBE measures.

Of course, we understand that the broad scope and the complexity of the Proposal as a whole, under the scope of Pillar Two, may (in principle) require a "step-by-step" approach (i.e. trying to separately address the issues identified for each of the four components of GloBE), however, we believe that – also on the basis of what was already noted in the same Consultation Document[8] – any step and choice should consider any reversal effects

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[5] Please refer to Section 2 of the Consultation Document.

[6] Please refer to Section 3 of the Consultation Document.

[7] Please refer to Section 4 of the Consultation Document.

[8] Please refer, *inter alia*, to page 30 and following of the Consultation Document, according to which "*The programme of work would explore options and issues in connection with the design of co-ordination, simplification and threshold measures including interaction with BEPS Actions. These options and issues are expected to include:*

and the interaction among all the four component of GloBE.

In other words, we believe that – for the next steps – the best way to proceed and reach a coordinated and well-structured proposal under Pillar Two, would be to analyse all the GloBE's (four) components in parallel, by also considering any possible interaction between the different mechanisms.

By way of example, a potential inconsistency among the different GloBE components could be the interaction between the IIR and the UPR: indeed, if two countries decide to introduce these two rules into their domestic legislation without proper coordination of how they will interact, uncertainty and double taxation of MNEs may be triggered. More specifically, by applying the two rules at the same time, the payer's country would deny a deduction for a payment to the extent that payment would not be taxed at a minimum rate in the payee country (under UPR) while the payee country would consider the same payment to be taxable to the extent that no minimum taxation occurred in the payer country (under IIR). Such lack of coordination would leave (i) both countries unclear about who should claim the taxation right on such income and (ii) the taxpayer at a high risk of double taxation.

As a result of the above, it will also be necessary to carefully explore how to correctly address the relationship between the different mechanisms (e.g. by establishing a hierarchy among them or implementing some sort of tie-breaker rule to avoid and/or resolve any undesirable conflicts).

Finally, in accordance with our comments regarding the Secretariat's proposal under Pillar One[9], even if it is currently outside the scope of these comments at this early stage, we can already note that it will be crucial to correctly address the implementation phase of GloBE and its joint impact with Pillar One in order to avoid any unwanted distortion of the market and the global tax environment, especially considering that two out of four of the GloBE's components have been designed as domestic provisions.

We are aware that this implementation will be difficult and time-consuming to monitor, since it will (hopefully) involve all the BEPS participating countries but, for this very reason, we strongly believe that it will be important to align – both in terms of timing and effectiveness – domestic implementation and the correct interaction between these new

1. Co-ordination between the undertaxed payments rule, subject to tax rule and income inclusion rule to minimise the risk of double taxation, including simplification measures that could further reduce compliance costs; and […]".

[9] Please refer to the paragraph n. 1. of our comments on "S*ecretariat proposal for a "Unified Approach" under Pillar One*", sent to the OECD Tax Policy and Statistics Division, Centre for Tax Policy and Administration on November 12, 2019.

taxing rights in all the participating countries in order to avoid any cross-border distortion or disputes among the different market jurisdictions (and any consequent negative effects for the MNEs).

On the basis of this foreword, please find here below our comments on the specific substantive topics to be addressed according to the Consultation Document with specific regard to the IIR.

2. Comments on the "Questions" formulated in the Consultation Document

2.1. Tax base determination

2.1.1 Financial accounts as starting point

The rationale behind the IIR is simple: it aims to ensure that all MNE profits (including offshore) are subject to at least a minimum level of taxation[10].

According to the OECD Secretariat, the Proposal should be designed to achieve the above-mentioned objectives in accordance with the principles of "design simplicity" that will minimize compliance and administration costs and the risk of double taxation[11].

In this respect, for sake of simplification[12], to improve compliance and the ability to administrate, and to neutralize differences in tax base calculations across jurisdictions, the Consultation Document explores the option to use "financial accounts" as a starting point for determining the effective tax rate ("**ETR**") and the tax base to which the IIR would apply[13]. This approach, however, raises a number of technical issues, including but not limited to the accounting standards to be used (i.e., the parent's or the subsidiary's) and

[10] Even if, in the Consultation Document, the 15 per cent rate is assumed as an example, the minimum rate determination has not yet been discussed, and so it will be necessary to agree on a common minimum rate to apply in the GloBE formula.

[11] We are referring, *inter alia*, to page 7 of the Consultation Document, where it is stated that "*the GloBE proposal should be designed to achieve these objectives consistent with principles of design simplicity that will minimise compliance and administration costs and the risk of double taxation. To that end, the Programme of Work calls for the consideration of simplifications, thresholds, carve-outs, and exclusions from the rules*".

[12] At paragraph 2.1., page 9 of the Consultation Document, the OECD Secretariat expressly admits that the alternative options to use the CFC or domestic corporate income tax ("**CIT**") legislation of the parent company in order to determine the tax base for GloBE proposal, may "result in significant compliance costs" for the MNEs, without ensuring uniformity in the tax base determination method across the different jurisdictions (so undermining the policy intent of the Proposal).

[13] Please refer to page 9-11 of the Consultation Document.

which financial accounting standards should be accepted (i.e., IFRS and/or certain local GAAP).

In this respect, as first general remark, we concur with the OECD Secretariat approach, which considers financial accounts to be the most suitable starting point for GloBE's tax base determination.

Of course, we are aware that financial accounts obviously differ from the tax base for CIT purposes, and, as a consequence, the choice to adopt financial accounts for GloBE purposes may lead to discrepancies and mismatches between the tax base for GloBE and domestic CIT purposes; however, we believe that, on the other hand, the objective to simplify and minimize compliance costs cannot be reached through the adoption of other references such as the CFC or domestic CIT rules.

Indeed, it goes without saying that each Country has its own CIT base rules and, as history recounts, global agreement on a common tax base (in this case for GloBE purposes) is something that appears to be out of reach for the time being.

As a consequence, any mismatch between the tax bases for GloBE and domestic CIT purposes is something that could be acceptable for the scope of Pillar Two, also considering that there will still be room to regulate the interaction between the different mechanisms at hand (e.g. by providing tax credits/exemptions for any taxes that may be due on the same amounts under GloBE and CIT rules).

On the basis of the foregoing, we believe that the adoption of financial accounts would be a feasible solution, but subject to the condition of consistency across all jurisdictions. In other words, we believe that the best solution for GloBE tax base determination would be the adoption of a unique, uniform accounting standard for all entities in all jurisdictions (subject to some agreed "basic adjustments" in order to align accounting income with a proper measure of taxable income; please refer to the following paragraph 2.1.2. for more details on this topic).

This idea is based on the consideration that the option to allow the adoption of different accounting standards for GloBE purposes, based on (a) the standards used by the parent or (b) applicable to/used by the subsidiaries, would anyhow lead to arbitrages and mismatches among the different entities and jurisdictions

In particular, the adoption of more than one accounting standard to determine the GloBE tax base, based on the ones adopted/applicable to the subsidiaries:

- as implicitly acknowledged in the same Consultation Document[14], would entail a

[14] According to which "*Computing the tax base using the local GAAP of the subsidiaries presents a number of challenges for tax administrations and runs counter to some of the GloBE policies*" (please see page 10).

high risk of inconsistencies in the application of the GloBE mechanism, with the possibility that subsidiaries may be treated differently (even in the same group), based on the applicable generally accepted account principle ("**GAAP**") of each country in which they are established;

- would imply higher compliance costs for both tax administrations and MNEs (which will have to handle many different accounting standards for the same purposes);

- would allow the subsidiary state to indirectly influence the GloBE mechanism (by amending, at its own discretion, the relevant applicable GAAP).

Based on this latter point, the alternative solution proposed in the Consultation Document[15] to compute the tax base using the accounting standards used by the ultimate parent company would – in our view – also lead to similar risks.

Indeed, even if we believe that the adoption of accounting standards to determine the GloBE tax base are based on those adopted by the ultimate parent would be preferable to the previous one where the standards applicable to the subsidiaries were used – because it would: (i) allow equal treatment for all subsidiaries of the group; (ii) imply lower compliance costs either for the tax administration (which will have to audit a group for GloBE purposes based on a sole set of accounting standards) or MNEs (especially for group presenting subsidiaries and branches that already prepare their financial statements in accordance with the accounting rules of the ultimate parent for consolidation purposes) – however, the fear that a state would interfere with the GloBE's tax base determination[16] even under such alternative option (as already feared with reference to the previous option) cannot be ruled out.

In other words, in both alternatives, jurisdictions would be anyhow free to amend their accounting standards, with risk of triggering distortions and discriminations among the MNEs based on their ultimate parent's location. Such contingency, would require a steady monitoring of the behaviors of each country and cannot exclude unfair competition through amendment of the local GAAP.

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[15] Please refer to paragraph 21. at page 10 of the Consultation Document.

[16] For instance, determining the applicable accounting standard based on the ultimate parent's company standard, it cannot be excluded that two comparable MNEs operating in the same business sector and with same features could be subject to different treatment under GloBE tax base calculation, due to the adoption of different accounting standards based on the relevant ultimate parent company location and choice.

As a result of the above, we believe that a unique accounting standard as the well-known IFRS[17] should be adopted at "entity-level" for the correct implementation of the Proposal, in order to ensure a harmonized tax base for GloBE purposes.

Indeed, in our opinion, the choice of IFRS as the sole accounting standards for all entities under GloBE's tax base determination: (i) would allow equal treatment of all subsidiaries of a group, regardless of their location; (ii) would simplify the handling of the tax base determination process by referring to a single set of accounting standards for all the entities and jurisdictions involved; (iii) would lead to lower compliance and administration costs in the long-term (especially for listed and non-listed MNEs that already adopt these accounting standards); (iv) would avoid any arbitrary or unfair competition among jurisdictions by amending their own GAAPs.

We are aware that this kind of solution will initially entail higher compliance costs for certain MNEs (especially for many non-listed enterprises) which currently do not already adopt IFRS and that will have to adopt it for GloBE purposes, but we believe that this is the most suitable way to ensure uniform treatment and avoid mismatches within the mechanism.

In the light of the above, in order to soften the initial impact on compliance costs, it could be explored the chance of providing a "transactional period" to allow MNEs to gradually adapt their accounting standards and implement the IFRS for each entity of the group.

In addition, it could be explored the chance of introducing certain carve-outs and threshold for small MNEs which could not be able to handle such implementation and the overall compliance burdens (as commented also in the following paragraph 2.3.).

In conclusion, we believe that the IFRS and more in detail the earning before tax ("EBT") values could be a valid parameter to determine fair and consistent tax base across the countries for GloBE purposes.

However, as outlined in the following paragraph 2.1.2., these amounts should be subject to some agreed "basic adjustments" in order to align accounting income with a proper measure of taxable income.

2.1.2. Adjustments

Even if the Consultation Document proposes financial accounts as the starting point for GloBE's tax base determination, it recognizes the need for adjustments for permanent

[17]The International Financial Reporting Standards ("IFRS") developed by the International Accounting Standards Board ("IASB").

and temporary differences between financial accounting income and taxable income[18]. More specifically, it identifies three adjustment mechanisms, with some operational examples provided in its Annex A.:

- Carry-forward of excess taxes and tax attributes method – this approach has three components: (i) carry-forward of excess tax paid at the subsidiary level[19] (ii) carry-forward for IIR tax paid[20] (i.e., crediting/refunding a parent entity's tax when the subsidiary-level tax exceeds the minimum rate), and (iii) carry-forward of subsidiaries' operating losses. Moreover, according to the Consultation Document, all three carry-forwards mechanisms "*would be tracked through memorandum accounts maintained by the parent corporation*"[21];

- Deferred tax accounting method – incorporating the method currently in use under most financial accounting standards to eliminate swings in the ETR calculation caused by temporary differences[22];

- Multi-year averaging method – calculating, for the sake of simplicity, the ETR over a specified number of years ("multi-year period") to address the volatility caused by periodic differences, without the mandatory need to develop separate rules for the carry-forward of losses, excess taxes and other tax attributes.

As the Consultation Document acknowledges, designing and implementing rules for addressing temporary differences using any of these approaches would require consideration of many factors, including, but not limited to, whether such approaches: (i) correctly address permanent differences as well as temporary differences; (ii) can

[18] According to paragraph 16 of the Consultation Document "*The income calculated for accounting purposes would then be subject to agreed adjustments in order to align accounting income with a proper measure of taxable income*", specifying at paragraph 24 that "*relying on the unadjusted figures in the accounts could mean that an entity's net profits for accounting purposes may be overstated or understated when compared to the amount reported for tax purposes*". In addition, with regard to certain kind of adjustments the Consultation Document states that they would be needed "*to eliminate potential double taxation*".

[19] Please refer to Example no. 1, reported in the Annex A of the Consultation Document.

[20] Please refer to Example no. 2, reported in the Annex A of the Consultation Document.

[21] Please refer to paragraph 34, page 13, of the Consultation Document;

[22] Please refer to Example nos. 3-5 reported in the Annex A of the Consultation Document.

accommodate ownership changes[23] and loss situations[24]; and (iii) may complicate the process of dealing with errors and subsequent adjustments[25]. Moreover, in the Consultation Document some concerns are also expressed with respect to the record-keeping burdens for taxpayers and the consequent audit processes of tax administrations[26].

Hence, considering the several flaws already identified in the Consultation Document with regard to the proposed approaches and the compliance burdens that these solutions could entail (such as the aforementioned record-keeping burdens), and the fact that the Proposal aims to simplify the process, it is clear that further alternatives have to be explored.

In this respect, we believe that – starting from a unique set of accounting standards like the IFRS to avoid distortion across jurisdictions (as discussed in previous paragraph 2.1.1.) – the goal of a fair and simple tax base for GloBE purposes could be achieved by providing only certain "basic adjustments" to the financial results of the MNEs in order to align accounting income with a proper measure of taxable income, thereby also obtaining a harmonized tax base determination criteria across the jurisdictions.

More specifically, by carefully analyzing each common category of permanent and temporary adjustments across the jurisdictions, the chance of only providing some "basic" adjustments in order to reflect the actual economic situation of each company and their effective tax bill should be explored, avoiding adjustments for certain temporary differences which do not actually represent the actual tax burden in a jurisdiction.

In a nutshell, as a preliminary overview, starting from the common features of the

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[23] Please refer to paragraph 50, page 15, of the Consultation Document according to which "*Further consideration would also need to be given to whether (and to what extent) credits should be eligible to be carried forward when there is a change in ownership of the subsidiary. Similarly, an averaging approach would also require special transition rules to deal with acquisitions and dispositions of subsidiaries and to address the particular year in which taxpayers first become subject to the GloBE proposal*".

[24] Please refer to paragraph 51, page 16, of the Consultation Document according to which "*Deferred tax accounting may not deal adequately with loss situations in respect of low-tax jurisdictions. For example, the deferred tax asset arising from an operating loss may be less than the minimum tax rate, potentially exposing the MNE to tax under the income inclusion rule when there is no underlying economic income*".

[25] Please refer to paragraph 51, page 16, of the Consultation Document according to which "*a multi-year average effective tax rate computation may also complicate the process of dealing with errors and subsequent adjustments*".

[26] In particular, in the Consultation Document, at paragraph 49, page 15, is specified that "*All three approaches described above entail some degree of recordkeeping burden*" and so also "*tax administrations would need to be able to verify those memorandum accounts*".

adjustment usually adopted in the global tax environment, it should be explored the chance of determining the tax base for GloBE purposes:

- starting from the financial results, determined according to the IFRS in order to have a common "starting" tax base for each entity across the jurisdictions;

- excluding from the above tax base, as suggested in the Consultation Document[27], certain types of income that are usually exempt (such as dividends) and the relevant connected expenses;

- adjusting the tax base on the basis of "permanent" tax adjustment arising, *inter alia*, from non-deductible expenses as "non-trading expenses" (i.e. expenses that are not related to an entity's commercial activity) or confidential/non properly documented expenses;

- not adjusting the tax base on the basis of certain "timing tax adjustment" (like depreciation and amortization of assets, bad debt provisions, limitation on interest deductions, etc.);

- however, allowing the carry-forward of losses (with or without limitations) to avoid the impact of ordinary timing differences between revenues and losses.

In our opinion, the above "simplified approach" would be in some way similar and have some commonalties with the approach already adopted by the Italian Tax Authority[28] for determining the ETR of foreign companies for domestic CFC[29] purposes, and would accomplish the simplification objective of the Proposal.

It goes without saying that, aside from agreeing on IFRS as starting point, in order to avoid distortions, this approach would however require the agreement of the participating jurisdictions on (i) the categories of items to be excluded from the tax base, (ii) the specific "permanent" adjustment to be targeted and introduced, as well as the (iii) "timing tax adjustments" to consider as irrelevant to determine the GloBE's tax base.

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[27] Please refer to paragraph 28, page 12 of the Consultation Document.

[28] We are referring to the indications provided by the Italian Tax Authority with the guidance protocol No. 143239, issued in September 16, 2016, where for the ETR test purposes was clarified the irrelevance of the "timing difference adjustments" which do not have "permanent nature".

[29] Governed under Article 167 of Italian Income Tax Code ("**ITC**").

2.2. Blending

Since the Proposal is mainly based on the ETR, according to the Secretariat, it must include rules that stipulate the extent to which the taxpayer can mix low and high-tax income in the same entity or across different entities in the same group. More specifically, the Programme of Work called for exploration of three options for blending low and high-tax income: (i) worldwide blending, (ii) jurisdictional blending, and (iii) entity blending.

The Consultation Document seems to implicitly support worldwide blending, i.e., aggregating in-scope foreign income and the associated tax paid or accrued at global level for purposes of computing the ETR. The document, in fact, underlines that this approach would presumably "*lower overall compliance costs (depending on the final design of the rule)*"[30] and "*provide more benefits to larger MNEs with significant and diversified operations across a number of low- and high-tax environments.*"[31].

In this regard, we note that even if, on the one hand, the worldwide blending approach could be considered to be the best option from a compliance and administrative costs perspective, on the other hand, , it would not seem to be capable of actually preventing MNEs from taking advantage of harmful and low-tax regimes.

On the contrary, in its current structure, the worldwide blending approach, operating on a global-level, could be manipulated just to hide harmful tax advantages, running against GloBE's policy and objectives.

In the same way, the jurisdictional blending approach, which makes reference to the aggregate amount of taxes paid in a certain jurisdiction, could also be subject to manipulation: indeed, it would not prevent MNEs that are currently subject to high income taxes in certain countries from moving activities to a country where there is already an entity benefitting from a special regime with zero/lower taxation just to meet the minimum tax requirement, thereby circumventing the GloBE application.

In the light of the foregoing and in accordance with the considerations illustrated in the previous paragraphs, in our view the best option to accomplish the GloBE's anti-erosion goals would be an entity blending approach – without considering the effects of tax groupings or consolidation regimes under local law – that, to be honest, would not be actual blending but a mere analysis on an entity by entity basis.

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[30] Please refer to paragraph 56, page 18, of the Consultation Document.

[31] Please refer to paragraph 61, page 19, of the Consultation Document.

We are aware that such an approach would increase compliance costs either for MNEs and the tax administrations, but – in our opinion – it could be the most suitable way to prevent the blurring of low/zero tax regime and profit shifting towards countries with special tax regimes.

2.3. Carve-outs

In Section 4 of the Consultation Document, the Programme of Work calls for the exploration of carve-outs from the IIR, based on turnover or other indications of the size of the group as well as *de minimis* thresholds and carve-outs for specific sectors and industries, however noting that certain exceptions (such as regimes compliant with the standards of BEPS Action 5 on harmful tax practices, and other substance-based carve-outs) would potentially undermine the policy intent and the effectiveness of the Proposal.

As already commented in our comments provided with respect to Pillar One, in principle we believe that – in order to avoid distortions and discrimination among the MNEs and the different jurisdictions – no carve-outs should be established.

Indeed, the more carve-outs are provided, the more the IIR increase its complexity (especially with respect to the subjective scope), entailing the risk of altering the tax neutrality (triggering cases of discrimination).

Moreover, in the absence of more specific details on the final design of the IIR (which is still subject to consultation), it is currently difficult to discuss whether the mechanism would be adaptable to specific industries or whether specific carve-outs should be included.

In this respect, we believe that the introduction of a "low" minimum rate – not yet disclosed and not discussed in the Consultation Document – could already by itself exclude the need to introduce certain carve-outs.

However, taking into account the general features of the measures at hand, and the expected compliance and administrations burdens (also from an accounting perspective), we believe that a *de minimis* threshold should be introduced in any case, excluding small-medium entities from the scope, as they would otherwise be overwhelmed with extra compliance costs or would not be well-structured enough to track and record all the information needed under these measures.

Also in this respect, in benchmarking the precise amount of the *de minimis* threshold for

each entity, all the features and compliance obligations that will be required according to the final designed IIR should be considered.

The considerations formulated above may also be extended to investigate a size threshold based on the size of the group (e.g. on the basis of the turnover), in order to avoid groups being overwhelmed with compliance costs and burdensome tax obligations that are not actually able to bear.

Finally, based on the definitive design of the IIR measure, it should be explored the opportunity to provide carve-outs for some entities of an MNE group, based on a certain percentage of ownership, in order to avoid the requests of information that are not available at shareholder level. A possible approach in this respect may be to include in the GloBE perimeter and scope only entities that are legally and effectively controlled[32].

* * * *

Hoping that you will find our comments useful, please do not hesitate to contact us if you require any clarification.

We welcome the opportunity to discuss these comments in greater detail and continue to participate in the dialogue as the OECD and country policymakers go forward with the work on this important project.

Yours sincerely,

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[32] It goes without saying that, in such a case, a common definition of "control" would have to be established and agreed by the jurisdictions.