Warsaw, 2 December 2019

Organisation for Economic Co-operation and Development

International Co-operation and Tax Administration Division

Centre for Tax Policy and Administration

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**COMMENTS ON THE OECD PUBLIC CONSULTATION DOCUMENT**

**GLOBAL ANTI-BASE EROSION PROPOSAL - PILLAR TWO**

Interactive Advertising Bureau Poland (IAB Poland) welcomes the opportunity to contribute to the OECD’s consultation process on taxation of the digitalized economy under Pillar Two Global Anti-Base Erosion Proposal (“GloBE”). We strongly support the aim of consensus-based and long term reform of the international tax system to address the challenges arising from the digitalization of the economy.

IAB Poland is a Polish advertising industry organization that unites and represents entities of the interactive industry. IAB Poland represents a wide range of entities of different scope and scale of activity, thus the standpoint below addresses the concerns of various types of businesses.

GloBE provides for the following rules:

a) **an income inclusion rule** that would tax the income of a foreign branch or a controlled entity if that income was subject to tax at an effective rate that is below a minimum rate;

b) **an undertaxed payments rule** that would operate by way of a denial of a deduction or imposition of source-based taxation (including withholding tax) for a payment to a related party if that payment was not subject to tax at or above a minimum rate;

c) **a switch-over rule** to be introduced into tax treaties that would permit a residence jurisdiction to switch from an exemption to a credit method where the profits attributable to a permanent establishment (PE) or derived from immovable property (which is not part of a PE) are subject to an effective rate below the minimum rate; and

d) **a subject to tax rule** that would complement the undertaxed payment rule by subjecting a payment to withholding or other taxes at source and adjusting eligibility for treaty benefits on certain items of income where the payment is not subject to tax at a minimum rate.

IAB Poland would like to present its remarks to particular issues within GloBE proposal as requested in Public Consultation Document.

1. **The use of financial accounts as a starting point for the base determination**

According to GloBE proposal, financial accounts (with agreed adjustments) should be used as a starting point to determine income for the purposes of calculation of effective tax rate (“ETR”) at the level of MNE group.

IAB Poland agrees in general that the use of financial accounts as a starting point would simplify and reduce the compliance costs of the GloBE regulations. Taking into account GloBE provides for new tax law rules that would result in additional administrative burden, i.a. necessity of calculation of tax at the level of the group, simplicity should be the main concern while designing the new rules in more detail. Using financial accounts may also provide acceptably appropriate tax base **but only under the condition that it is subject to relevant and reasonably agreed adjustments** so that the major differences between financial accounts and tax accounts are addressed.

**Using accounting standards of ultimate parent entity of MNE should be considered to be the most practical approach (assuming that the financial accounts are to be the starting point for calculation of ETR)** taking into account majority of MNEs prepares consolidated reports. It should however be noted that for the **groups that do not prepare consolidated accounts** this approach results in the obligation to prepare a calculation solely for the purposes of GloBE. Therefore, **it should be considered to carve-out these MNEs from GloBE** (it should concern mainly the smallest MNEs and impact of this carve-out on the general effectiveness of the system should be immaterial).

**The financial standards acceptable in the jurisdiction of ultimate parent entity being a country – member of OECD should be treated as appropriate for GloBE. In other cases accounting standards that are internationally acceptable (such as IFRS) should be appropriate for GloBE purposes**. Indicating that only chosen, e.g. internationally recognized financial accounting standards are acceptable would result in unnecessary additional administrative burden for the groups. Taking into account majority of MNEs have their ultimate parent entity in the jurisdictions with widely developed financial regulations with which the MNEs must comply, the risk connected with the above approach seems to be remote (and immaterial as compared to the potential burden connected with indicating e.g. IFRS and US GAAP as acceptable standards).

In addition, allowing for more than one accounting standard for GloBE purposes should not make it possible to place some MNEs at the competitive advantage provided that the chosen standard will be acceptable in MNE’s ultimate parent jurisdiction (being OECD member) or will be internationally acceptable standard.

Assuming **reasonable thresholds should be determined for the purposes of GloBE undertaxed payments rule**, MNEs that do not prepare consolidated financial accounts and at the same time are subject to this rule should not be numerous. Nevertheless in such cases, **MNEs should be carved-out from GloBE regulations.**

1. **The level of acceptable combining high-tax and low-tax income from different sources (“Blending”)**

GloBe proposal is based on the effective tax rate test. Thus, it must stipulate rules of acceptable blending, i.e. combining low-tax and high-tax income within one entity or at the level of the group. Therefore, in the Public Consultation Document, there is a discussion whether blending should be allowed:

* broadly – globally, at the level of the group; thus income from all sources of all group entities would be taken into account to calculate ETR;
* at the level of the jurisdiction – thus mixing of low-tax and high-tax of entities of MNE group from given jurisdiction would be blended; or
* at the level of particular entities.

IAB Poland is of the opinion that **blending at the global level should be allowed**. This is because, GloBE, like many other initiatives aimed at combatting profit shifting mechanism and more generally tax avoidance, results in huge increase of complexity of tax regulations and consequently, increase of administrative burden and compliance cost (not to forget the decrease of certitude of the law). Thus, **it is highly desirable from business organization perspective to choose solutions that are least complicated**. For some MNEs having dozens of subsidiaries in numerous jurisdictions obligation of blending at the entity level would requires efforts that should be seen as inadequately high as compared to the potential risk of making the solution less effective.

**Blending at the group level still allows for achieving the aim of making MNEs paying income tax according to the agreed minimum ETR** even though the allocation of taxing rights may not be that adequate as in the case of blending at the entity or jurisdiction level.

1. **Carve-outs and thresholds**

IAB Poland strongly supports the idea of providing reasonable carve-outs and thresholds for GloBE rules. **Carve-outs should be stipulated for the cases where the risk of undertaxation does not exist** **or is managed by other anti-avoidance rules that meet certain criteria** (e.g. are compliant with general anti-avoidance rule “GAAR” as provided in EU Anti-Tax Avoidance Directive). Therefore, in case all or majority of the MNE group entities operate in the countries that have implemented anti-tax avoidance measures package such as CFC rules, exit tax or limitation of deductibility of interest, MNE could be allowed not to apply GloBE measures.

**Carve-outs should be based on simple, clear and measureable criteria** rather than on the substance test or other circumstances. This is to **make sure the new rules are predictable for taxpayers and not subject to ex-post assessment by tax authorities**. This is needed to **avoid costly disputes and excessive compliance costs for taxpayers**. The goal of international tax policy should be a predictable tax regime, that allows companies operating across borders to make long-term investments.

Implementation of the thresholds is necessary in order to protect the small and medium local enterprises whose presence in foreign jurisdiction is limited and does not infringe materially the current rules on split of taxing rights between the countries against potential administrative burden connected with the new taxation rules. Thus, the MNEs with consolidated revenue level below certain threshold, e.g. USD 100M should automatically be excluded from GloBE proposal.

**About IAB Poland**

Interactive Advertising Bureau Poland (IAB Poland) is a Polish advertising industry organization that unites and represents entities of the interactive industry. IAB Poland members include more than 200 companies, including the biggest web portals, global media groups, interactive agencies, media houses and technology providers. In 2012 the organization received the MIXX Awards Europe, honoring the best IAB bureau in Europe.

The mission of IAB Poland is to support development of the Internet industry and take regulatory actions to enhance the competitiveness of the market, conducting research projects, leading educational programs and providing legal protection.

The organization cooperates closely with American bureau as well as with European hubs, such as IAB Europe and others, both global and local organizations. IAB Poland holds a number of initiatives that aim to educate both the market and Internet users. Those initiatives are: “Safe youngsters on the Internet”, “Watch legal”, “Everything about cookies”, “Comment, not offend”, “Advertise consciously. Initiative for fair advertising”.