

Warsaw, 14 December 2020

**Organisation for Economic Co-operation and Development  
Centre for Tax Policy and Administration**

Dear Sirs,

Following the publication of Reports on Pillar One and Pillar Two Blueprints in October 2020 and invitation for public consultation of these documents, we are pleased to provide our comments and remarks.

*Pillar One – Amount A*

As a general comment, we would like to urge for greater clarity and simplicity of the Amount A mechanism. In our opinion, a number of aspects still need to be subject for further technical works, including:

- Process of selecting the paying entity, which is now quite complex and based on a number of qualitative factors (e.g. functional profile of entity);
- Identification whether the activities of the MNE group are covered activities both for ADS and CFB, as the lists and definition provided might not be sufficient.

In our view, additional guidance should be developed to clarify the issues above. Additionally, we think that a simplified document on the Amount A mechanism should be developed, in a form of a “user guide”, presenting the overall Amount A mechanism in a simplified manner and making references to specific parts of the final report, where issues are discussed in detail.

*Pillar One – Amount B*

We believe, that the scope of Amount B should be narrow, which affect positively for clarity of new regulations. The narrow scope definition of the baseline marketing and distribution activities outlined in the positive and negative list will limit interpretation disputes in case of clear quantitative indicators. Therefore quantitative indicators or thresholds are crucial when establishing whether or not entities are in the scope of Amount B. Moreover, in order to increase the simplicity of fixed returned mechanism, multifunctional entities (i.e. entities that perform baseline marketing and distribution and other activities) should be excluded from the scope of Amount B. Traditional arm's length principle should be in place in those cases. EBIT should be used as the appropriate profit level indicator, as it is the distribution activity in fact. Amount B should account for variation in returns to baseline marketing and distribution activities by industry and region. Central and Eastern Europe should be at least treated as a separate region.

*Pillar Two*

We are concerned about specific technical solutions provided in the Blueprint Report, which effectively neutralise the effects of development policy tools, which encourage MNE group to make investments in Poland. These are substance-based carve-out and treatment of government grants.

### *Substance-based carve-out*

We understand that the idea behind introducing substance-based carve-out is to isolate from GloBE tax base the profits of those entities, which conduct substantive economic activities, thus posing no or very little BEPS-related risks. We fully agree with the idea of a carve-out, however, we do not perceive the mechanism proposed in the Pillar II Blueprint as a solution.

The situation in Poland is that the nominal Corporate Income Tax rate is at the level of 19%, which for most entities potentially covered by GloBE will mean that their Effective Tax rate will exceed GloBE minimum tax rate (say, 12.5%). The majority of cases, where the ETR will be below minimum GloBE tax rate will be when given entities benefit from government's tax policy tools, including tax reliefs and tax exemptions. As those instruments are targeted on economic development of the country – and / or its particular regions – their effectiveness is of utmost importance both for the country and for entities conducting economic activities there.

One of the key development-driven tax policy tools in Poland is Polish Investment Zone (and earlier, Special Economic Zones). Its aim is to encourage number and volume of investment in particular regions of Poland as well as increasing the income of citizens and local budgets, quality of jobs, employment ratio and competitiveness of regions.

Currently, over 2,000 entities conduct their activities in the Polish Investment Zone, in the area of production, distribution and services. The key benefit for them to invest in the Polish Investment Zone is Corporate Income Tax relief. However, despite posing no or very little BEPS risks, their activities are likely to be penalized, as the CIT relief will decrease their covered taxes (in some cases even to zero), thus likely decreasing their ETR below GloBE minimum tax level and include them in GloBE mechanism. As a result, it is likely that such entities will need to pay additional GloBE tax, using legitimate tax policy development-driven tax policy tools. In our opinion, this is likely to be perceived as unfair treatment of the entities making significant investments in Poland.

To address this issue, we believe more substantial carve-out mechanism is needed, e.g. the one where after meeting certain quantitative criteria (which could be certain level of payroll expenses or depreciation of fixed assets), all of the entity's income will be treated as derived from substantive activities and thus, excluded from GloBE. In our view, such concept seems to be conceptually more logical, as it is difficult to imagine that only a part of entity's income is derived from substantive activities when criteria are met. Using a carve-out in the current form might result in the situation, where also entities not conducting substantive activities (and not intended to use the carve-out) will benefit from a carve-out, as part of their income will also be excluded from GloBE (as they will certainly will also have some level of payroll and depreciation expenses). In the case "all or nothing" approach is used in the carve-out mechanism, only the intended group of taxpayers will be benefitting.

In our view, application of a carve-out based on formulaic approach is likely to prove much more difficult in administration than "all or nothing" approach. As the Pillar Two is already complex, it is worth to consider prioritization of solution, which help to achieve similar technical effects, but are a lot simpler in application for the entities. This is of particular importance to businesses, which will also need to cope with the Amount A mechanism.

### *Treatment of government grants*

Our general opinion is that MNE groups and particular constituent entities should not be penalized for using (and benefiting from) legitimate government and other (e.g. EU) development policy tools.

As the Blueprint Report does not specify what specific types of government grants are covered under this area, it seems to be the intention to cover all governments grants, including non-tax related grants and EU funding. As a result, all government grants will be included in the calculation of the jurisdictional (and individual) ETR under the GloBE, influencing either the amount of tax liability (reduce the numerator of the ETR) or income (increase ETR denominator). In either case, this will decrease the level of ETR.

The government grants are economic policy tools, intended to stimulate the development and investment in particular country or its region. They may be granted for different purposes, e.g. to stimulate employment in the areas where unemployment is high, to protect the environment, to increase qualifications of potential employees, to stimulate production of renewable energy, etc. The vast part of those grants may not be even directly connected to the economic activity, but rather help to address country's social or environmental policy goals.

From the point of view of the investors, it is likely that such an approach will adversely impact their decisions either to start the investment in Poland or expand the existing investment. Please note that a number of such investments in Poland are encouraged by the development policy tools, including grants and EU funding. In the case grants and EU funding are included in the ETR formula, it is likely that the interest of MNEs to invest in Poland – where such investment is stimulated by grants and EU funds - will significantly decrease.

Inclusion of grants in the ETR calculation will effectively penalize those entities, which pose very little BEPS risks, in particular the ones whose ETR resulting from “normal” economic activity will be above minimum GloBE rate, but due to including cash grants (granted e.g. for the purpose of restoring the good condition of environment), they will fall in scope of GloBE.

It also should be noted that in the EU countries, government grants (including EU funding) is under detailed control and scrutiny from country's government and European Commission – both with respect to their granting and spending. The EU state aid control is targeted at minimizing harmful subsidy competition, subjecting aid measures to strict rules uniform across all member states and requiring that they exert incentive effect contributing to attracting actual investment into particular locations. Thus, such grants pose very little BEPS risks, as they are not tax driven. Thus, including them in ETR calculation – and GloBE tax base – does not comply with key GloBE's policy goal, which is to tackle remaining BEPS issues.

In our opinion all government grants, which are not linked to the tax system (are granted without purpose of reducing tax liability), should be neutral for the purpose of ETR calculation (excluded from numerator and denominator) and excluded from GloBE tax base.

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We hope you will find our comments and remarks useful. We also will be happy to participate in the consultation meetings to be held virtually on 14 and 15 January 2021.

Kind regards,

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