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Comments on the Public consultation document Pillar Two – GloBE Information Return

FAR, the institute for the accountancy profession in Sweden, takes the opportunity to respond on the public consultation document *Pillar Two – GloBE Information Return*.

Introduction

On December 20, 2022, OECD sent out the “Pillar Two – GloBE Information Return” (“GIR”) for public consultation. The deadline for delivering comments is February 3, 2023. It should be noted that our comments are based solely on the draft sent out for public consultation. All other aspects of Pillar Two have been disregarded. The draft was sent out the same day as the public consultation draft named “Tax Certainty for the GloBE rules”. The current consultation document is very extensive, which implies that the consultants do not get enough time to examine both drafts. FAR believes that requesting opinions for several drafts at the same time might result in a reluctance to hand in comments or at least effect the quality of the opinions, neither of which are in the best of interest of OECD.

The degree of difficulty in finding the requested information

The GIR consists of 268 data points, of which a large amount is not readily available (although all taxpayers may not be required to include all the data points). Whilst some data may be easy to access directly from the accounts (typically from the profit and loss statement and the balance sheet) in the group’s financial statements, others require a more extensive search, for example by looking at the transaction level of individual accounts. This raises the question of if there are any consequences if it is not possible to trace the required information to the financial statements. Therefore, it would be beneficial if it is clarified how it is expected that the information should be collected (i.e. which sources should be used).

Furthermore, it is also clear that a considered amount of data requires input from the tax department at the companies’ (e.g. the ETR computation, top-up tax computation and in determining applicable rules). Just section 3.4.1 (a) in the return (adjustments to the financial accounts net income or loss) requires up to 24 different items for each constituent entity, whereof a large amount of the items requires extensive knowledge about the rules. The rules are also particularly complex when it comes to tracking deferred tax.



According to the newly published safe harbor rules, a qualified CbC report is a Country-by-Country Report filed using Qualified Financial Statements. Qualified financial statements are however not relevant for all the data points that should be populated in a CbC report. To give an example, it is not easy to deduce the income tax paid, which should be reported in a CbC report. Hence, we would like to receive answers on which data points the qualified financial statements must be used for in order for the CbC report to be seen as qualified.

The burden for the covered companies

The proposed GIR is 22 pages long and contains several chapters which partly require the same or similar information from the companies. Further, it is sometimes unclear which parts that should be filled out on the group level, jurisdictional level, or constituent entity level. The covered companies will have a hard time trying to understand what could be skipped and what they are required to provide. Hence, we inquire about a return that is easy to follow and where it clearly states who should provide the requested information and where the companies could find the information.

Moreover, the currently proposed return requires the companies to apply the same information more than once, which is not proportional and could lead to a comprehensive economic burden for the covered companies. Another observation is that the covered companies must provide the same information every year, for example, the GloBE income for the prior years in order to calculate the de minimis exclusion.

FAR is experiencing difficulties regarding the extensive use of abbreviations in the return since there are no explanations. Hence, we request an abbreviation list as an attachment to the information return in which all the abbreviations used in the return are explained. The explanatory guide is thus not sufficient in this regard.

Further, the return refers to articles in the model rules in several columns. The return is also impossible to understand without guidance and in several cases, it is difficult to understand what kind of information the return requires. The covered companies will have a hard time understanding the return and FAR is of the opinion that the return in its current wording could lead to legal uncertainty. The same goes for the columns which ask for information that does not seem to be needed in order to examine the companies' tax situations.

Moreover, the return is time-consuming for the covered companies, and they will need to process and produce a large amount of data. It is of key importance to reduce the compliance burden, for example through the GloBE safe harbor rules. Not only for the affected companies but also for the tax authorities. On the other hand, it is also important that the GIR is requiring sufficient information so that the tax authorities are able to audit the calculations without having to request additional information (which in itself could lead to increased compliance costs). Hence, there is a balance between requiring too much information and not requiring enough information.



It is also noteworthy that the GIR will require annual monitoring of any MNE group changes (e.g. reorganizations, acquisitions, divestitures, share transfers etc.). This process is likely not standard procedure within groups today and will hence require additional effort and burden.

As stated above, the currently proposed information return is incoherent and incomprehensible. It is in FAR's opinion an unreasonable requirement for the covered companies to file an information return for each jurisdiction within the group. It would be preferable if the filing of the GIR could be done in a similar way as the CbC reporting. FAR understands that the intention is that the GIR will be filed centrally with one tax authority and exchanged with other tax authorities. If one company within the group could file a single return for all of the entities and the other entities filed a notification, it would significantly ease the burden. However, FAR urge that there is a need to finalize the exchange agreements soon to prevent local filing requirements.

Concluding remarks

The need for simplification and coherence within the GIR is essential for the system to function and to ease the burden for both the covered entities and the countries' tax administrations. In order to eliminate the legal uncertainty, the return must be comprehensible and proportional. The information should only be requested once and should preferably be possible to find in the companies' financial statements. The currently proposed information return does not comply with any of the abovementioned requirements. Therefore, our assessment is that the burden of the rules and the current wording of the GIR, for all parties involved, far outweighs the benefits.

It would be beneficial to include an abbreviation list as an attachment to the information return to make sure that the companies understand what the GIR are requiring.

Although the first returns will not need to be filed until 30 June 2026 (i.e. 18 months after the end of the fiscal year), groups must be able to understand the data needed to comply with the rules.

The GIR is an enormously complex return, and it will be very difficult for companies to understand the calculations and collect all the information needed to comply with the rules, not to mention very costly. Thus, it is only reasonable to question if groups could be expected to collect, retain and report all the information in the GIR to tax administrations.

Yours sincerely

FAR

A handwritten signature in blue ink that reads "Michael Johansson".

Michael Johansson

Chairman of the Comment Letter group Tax, FAR