DELIVERED BY ELECTRONIC MAIL
taxpublicconsultation@oecd.org
International Cooperation and Tax Administration Division
Organisation for Economic Co-operation and Development
Paris, France

December 2, 2019

Dear Sir/Madam,

We, the signatories to this letter[1], are responding to the Secretariat's invitation to provide comments with respect to the public consultation document on the Global Anti-Base Erosion Proposal ("**GloBE**") – Pillar Two (the "**GloBE Proposal**"**)**, released on November 8, 2019.

This letter was prepared by an informal coalition of global institutional investors, working in collaboration to make this joint submission on the GloBE Proposal. This group supports the OECD's objective to protect the tax base of parent jurisdictions and prevent profit shifting to jurisdictions with no or very low taxation in the context of multinational enterprises ("**MNEs**").

The main objective of this joint submission is to guard against the GloBE Proposal creating unintended and adverse consequences for pension funds and sovereign wealth funds (referred to as "**Pension Funds** and **SWFs**").

1. Tax regime applicable to Pension Funds and SWFs

The GloBE Proposal calls for the development of co-ordinated rules to address ongoing risks from structures that allow MNEs to shift their profits to jurisdictions where they are subject to no or very low taxation. Pension Funds and SWFs differ in many aspects from MNEs, most particularly from a regulatory, tax and policy perspective, but also as they are investing, rather than running a business enterprise.

The OECD recognizes the social function of Pension Funds, for example, in the Discussion Draft on the Treaty Residence of Pension Funds,[2] which has been incorporated in the OECD Commentary to the Model Tax Convention. The capital of Pension Funds is entirely comprised of pension contributions, which are received from employees and/or employers, and investment results. The contributions are invested by the Pension Fund with the aim of providing future retirement benefits to the beneficiaries. The individual pension beneficiaries are the ultimate beneficiaries of the capital of Pension Funds.

SWFs are special purpose investment funds (e.g., fiscal stabilization funds, saving funds, reserve investment corporations, development funds or pension reserve funds without explicit pension liabilities, etc.) that are owned and set up by a government to accomplish long-term macroeconomic purposes and public policy goals. They generally have long-term obligations and commitments to their respective beneficiaries and constituents, seek to improve the management of public finances, provide protection against macroeconomic volatility and support long-term economic growth in their home countries, recipient countries and the international financial system.

As Pension Funds and SWFs fulfil such an important role in society and the global economy, they are often subject to specific tax regimes as a result of which they are generally not subject to a taxation on investment profits, or only marginally subject to taxation (e.g. as a result of being able to offset provisions for future retirement savings against investment income in the case of Pension Funds) or subject to special pension yield taxation regimes. In the context of

---

[1] This group is representative of a larger global constituency of pension funds and SWF's. Pension assets have reached USD 44.1 trillion worldwide at the end of 2018 (http://www.oecd.org/daf/fin/private-pensions/globalpensionstatistics.htm) and global SWF assets are estimated at USD 7.5 trillion per March 2018 (https://www.reuters.com/article/us-global-swf-assets/global-sovereign-fund-assets-jump-to-7-45-trillion-preqin-idUSKBN1HJ2DG).
[2] Public Discussion Draft on the Treaty Residence of Pension Funds, released on 29 February 2016.

Pension Funds, this is also a necessity given the fact that individual beneficiaries are taxed as and when they receive their pensions.

In most OECD members states, this regime for the taxation of pensions is based on the 'EET Model'[3] for taxing retirement savings[4], which mandates that pension contributions and investment income (including capital gains) are exempt from tax at the level of the Pension Fund, whilst the pension payments are taxed with the individual pension beneficiaries upon receipt. In this system, double or triple taxation is prevented and the levy of tax is linked to the receipt of pension benefits.

Furthermore, as Pension Funds are subject to regulatory supervision in the jurisdictions in which they are based and SWFs are inextricably linked to their home state, the functions performed by these funds will primarily be performed in these jurisdictions. Consequently, neither Pension Funds nor SWFs have an incentive or ability to shift profits to other jurisdictions.

2. Elements of the GloBE Proposal (income inclusion, undertaxed payments, 'subject to tax' rule)

The income inclusion rule proposes to tax 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. In addition, the undertaxed payments rule would operate by way of a denial of a deduction or imposition of source-based taxation for payments to related parties if the payment is not subject to tax at or above a minimum rate. Furthermore, the subject to tax rule would complement the undertaxed payments rule by subjecting certain payments to withholding or other taxes at source on items of income that are not subject to tax at a minimum rate.

As explained above, Pension Funds and SWFs are often not subject to tax (or only to a very limited extent) in order to prevent double taxation of pension savings or of national funds to be used for long-term public policy purposes. In essence, Pension Funds facilitate tax neutral retirement investing from the perspective of the pension beneficiaries and SWFs facilitate tax neutral national savings programs for the benefit of future generations. On that basis, subjecting income derived from foreign investment activities (which may include income derived from controlled entities or tax transparent vehicles) to a minimum rate of taxation would be contrary to the underlying principle of an effectively functioning pension or national savings system that seeks to prevent double taxation for its beneficiaries. Subjecting these Pension Fund and SWF investments to (additional) taxation is not the aim of the GloBE Proposal (see above), which is addressing ongoing risks from structures that allow MNEs to shift profit to jurisdictions where they are subject to no or very low taxation.

Furthermore, Pension Funds and SWFs, because of their tax-exempt status (or limited taxable base), are generally not able to credit any taxes on investment income. In the context of Pension Funds such credits can also not be effectuated by the beneficiaries of pension distributions, as any such credits cannot be 'rolled-over' to them. Conversely, if an individual would have invested for his or her own account, he or she would be able to credit the foreign taxes on investment income against their income tax due. Hence, a level of source-based taxation or withholding tax (under the subject to tax rule) would also directly impact the investment returns of pension beneficiaries (in the form of double taxation).

It is important to consider that Pension Funds and SWFs may also be affected by the GloBE Proposal if they invest through other investment entities, such as co-investment vehicles, CIV or non-CIV funds. In order to increase economies of scale, share, mitigate investment risks, or to gain access to regional or asset specific knowledge, Pension Funds and SWFs make use of third party funds and other types of entities in which they are pooled with other investors. The undersigned are of the view that such pooling entities – which are set-up with the purpose of enabling collective tax neutral investing – should also not be adversely affected by the GloBE Proposal. The same rationale should apply if investors in such entities would not have been affected had they invested directly.

Another point of concern is that even though the proposed rules focus on MNEs' parent-subsidiary relations, group earnings and group consolidated accounts, point 29 of the GloBE Proposal contemplates applying the subject to tax rule to

---

[3] Some pension funds are subject to a special yield taxation (under the 'ETT Model' for pension taxation).

[4] OECD Economic Studies No. 39, 2004/2, 'Tax treatment of private pension savings in OECD countries':
http://www.wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2000/03/21/000094946_00030305410097/Rendered/PDF/multi_page.pdf, http://ec.europa.eu/taxation_customs/taxation/personal_tax/pensions/index_en.htm https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-14 029_Towards_an_EU_single_market_for_Personal_Pensions-_An_EIOPA_Preliminary_Report_to_COM.pdf and http://www.europarl.europa.eu/RegData/etudes/STUD/2014/536281/IPOL_STU(2014)536281_EN.pdf (page 68)

unrelated parties. The application of such a rule in those circumstances could have an unintended impact if it were to be applied to investment funds and pooling vehicles (and potentially to Pension Funds and SWFs themselves).

3. Request and Future Actions

The undersigned consider that the overall aim of these rules (protecting the tax base of parent jurisdictions, achieving a level playing field for taxation of MNEs, and the prevention of profit shifting to low tax jurisdictions) is not achieved by applying the minimum taxation rules to Pension Funds and SWFs. States have expressly in whole or in part exempted Pension Funds and SWFs from (corporate) income taxation for the policy reasons outlined above.

The GloBE Proposal was not intended for Pension Funds and SWFs. Its proposed form may nonetheless affect these funds, and so the undersigned are of the view that a carve out for Pension Funds and SWFs would be appropriate. We would also encourage you to consider appropriate measures to safeguard investment (pooling) structures that are aimed at achieving tax neutrality against unintended effects of the GloBE Proposal.

In summary, we would like to provide further views and comments to you in the coming weeks, to expand upon the proposals put forward in this submission.

Sincerely,

Michiel de Wit
Senior Tax Counsel
APG Asset Management N.V.

[signed]

Ruth Woolmer
Senior Vice President, Head of Tax
GIC Private Limited

[signed]

Bernard Bruggeman
Sr. Tax Counsel
MN Services N.V.

[signed]

John Payne
Head of Tax
New Zealand Superannuation Fund

[signed]

Maj-Britt Klemp
Head of Tax
PensionDanmark

[signed]

Niels Krook
Principal Tax Counsel
PGGM Investment Management

[signed]