Comments to public consultation document: Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint

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Paris, France

December 14, 2020

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 report on Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint (the "**Pillar Two Blueprint**"), released on October 12, 2020.

The signatories to this letter represent pension funds, similar government-related funds, and other sovereign wealth funds ("**SWFs**"). The issues raised by the Pillar Two Blueprint (i.e. the focus on ensuring all international operating businesses pay a minimum level of tax) are of great importance to pension funds and SWFs worldwide. This group welcomes and supports the OECD's objective to protect the tax base of source countries and 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 endorse the OECD's work performed to date and to endorse the proposed safeguard against creating unintended and adverse consequences for pension funds and SWFs as a consequence of implementing Pillar Two.

1 Endorsements of proposed Solutions and proposed Exclusions

We acknowledge the hard work done by the OECD to continue the design and the dialogue on the proposed measures under the Global Anti-Base Erosion Proposal ("**GloBE**"), particularly in these challenging times due to the COVID-19 pandemic.

We support the OECD's aim for a coordinated approach to reach a future agreement and, considering the many countries that are participating in the Inclusive Framework, we encourage the OECD to place a high priority on achieving consistency among the proposed measures.

1.1 Pension funds and SWFs

As articulated in our previous submissions, pension funds and SWFs differ in many aspects from MNEs, most particularly from a regulatory, tax and policy perspective, but also as they are primarily investors, rather than being directly involved in running a business enterprise. Hence, we appreciate and endorse the proposal that certain Ultimate Parent Entities such as pension funds and governmental entities (including SWFs) are specifically excluded from the application of the GloBE rules. We agree that this is in line with the policy rationale of the GloBE proposal and is consistent with the policy rationale behind the distinct domestic tax treatment of pension funds and SWFs.

For clarification of the Pension Fund and Governmental Entity definitions under Excluded Entities in the Pillar Two Blueprint, we will provide recommendations below.

1.1.1 Clarification of definitions

For the avoidance of doubt, we recommend including in the explanatory notes (e.g. in paragraph 84 and 85) that tax regimes applicable to pension funds across the globe may differ, albeit with similar underlying policy objectives. Some pension funds

[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).

are fully exempt from tax in their home state, other pension funds may benefit from specific tax regimes under which they are for example entitled to reduced rates. The particular tax treatment of the pension fund as such does not detract from the policy rationale of exempting them from the GloBE rules in accordance with the Pension Fund definition in the Pillar Two Blueprint.

The Excluded Entity definition currently refers to "an entity that would otherwise be an Ultimate Parent Entity". The Pension Fund and Governmental Entity definitions in the Pillar Two Blueprint also include any entity or arrangement that is wholly-owned, directly or indirectly, by a Pension Fund or Governmental Entity (which would be the Ultimate Parent Entity ("UPE") in that case). These wholly-owned subsidiaries may not qualify as a UPE. Hence, we recommend amending the Excluded Entity definition to clarify that wholly-owned subsidiaries of a Pension Fund or Governmental Entity will be considered Excluded Entities.

Also in relation to wholly-owned entities of a Pension Fund or Government Entity, the definitions mention that such entity "does not carry on a trade or business but is established and operated (exclusively, or almost exclusively) to hold assets or invest funds for the benefit of that Pension Fund or Government Entity". We recommend adding that such wholly-owned entity does not carry on a "commercial" trade or business, similar to the Governmental Entity definition under (b)(iii). Addition of the word "commercial" is suggested to clarify the stated intentions and scope.

As stated by the OECD, excluding pension funds and SWFs will not hinder the application of the GloBE rules to operational portfolio companies held by pension funds and SWFs as operational portfolio companies should be assessed independently from the position of a pension fund or SWF.

1.2 Investment Funds

Although the position of pension funds and SWFs should be clearly distinguished from that of investment funds, the proposed exclusion of investment funds will also be very relevant to pension funds and SWFs. As mentioned in previous submissions, in order to increase economies of scale, mitigate investment risks, or to gain access to regional or asset specific knowledge, pension funds and SWFs make use of third party managed investment funds and other types of entities in which they pool capital with other investors. In many instances pension funds and SWF's are the ultimate investors in such investment fund structures so there will be an (indirect) effect from the application of the GloBE rules to those investment funds.

Hence, we acknowledge the need for an exclusion for investment funds in order to safeguard tax neutrality in respect of its ultimate investors. The proposed exclusion of investment funds as included in the Pillar Two Blueprint reflects a sensible framework to ensure that this policy rationale is safeguarded.

2 Need for consistency across jurisdictions

Although we endorse the proposal that pension funds, governmental entities (such as SWFs) and investment funds are specifically excluded from the GloBE rules, we do want to address concerns about the risk of an inconsistent implementation of the GloBE rules (and its exclusions) across countries.

An inconsistent approach to implementation across countries could have severe adverse consequences (direct or indirect) - both substantive and compliance/conformity related - to this group of global investors if it would result in (part of) the GloBE rules being applied to (part of) this group's investments.

In order to address this risk of inconsistency, we consider that there needs to be alignment and agreement on the principles in the Pillar Two Blueprint between members of the Inclusive Framework. First and foremost, to ensure consistency in the Excluded Entity classification and the application of the GloBE rules across countries. Secondly, in order to prevent the situation where individual countries or blocks of countries proceed with the enactment of local or regional proposals that are similar in nature but in reality different in their classification and/or application. This would clearly be undesirable as we may then end up with a variety of domestic GloBE-type rules but each with their own idiosyncrasies.

Differences in the application of the GloBE rules will inadvertently lead to inefficiencies, higher costs and therefore lower returns on investment for Pension Funds and SWFs. Reliance on dispute resolution and review processes may be helpful as a backstop but upfront clarity and agreement on base principles across jurisdictions is important. We therefore urge you and each of the members of the Inclusive Framework to further the thinking about (upfront) solutions to prevent differences in implementation before finalizing the work on Pillar Two.

3 Conclusion and Future actions

We appreciate the challenges in obtaining agreement on the Pillar Two Blueprint during the COVID 19 pandemic. We support all the work done to date and endorse the approach taken in respect of the Excluded Entities definitions.

In order for the Pillar Two Blueprint proposals to work efficiently, we consider that consistency in application of the proposed principles across countries will be critical. We therefore ask that the OECD use the proposed Excluded Entities definitions to develop clear and distinct standards which can be implemented in conformity by each of the members of the Inclusive Framework.

We will of course be at your disposal to provide further information or views on the next steps in this challenging process.

Sincerely,

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