



Memo

To International Co-operation and Tax Administration Division,
OECD/CTPA

From KPMG International¹

Date February 3, 2023

Ref KPMG Comments on Public Consultation Document: Pillar Two –
GloBE Information Return

Thank you for the opportunity to respond to the public consultation document on Pillar Two – GloBE Information Return (“GIR”).

The GIR has a critical role in making the GloBE rules administrable for both taxpayers and tax administrations. We strongly support the efforts of the Inclusive Framework on BEPS to develop a standardized reporting framework and centralized filing system.

As the document acknowledges Annex A is designed to reflect all the data points that a Multinational Enterprise (“MNE”) Group may be required to collect to calculate its GloBE tax liability. The document notes that ‘it is not expected that it will be necessary, in all cases, for MNE Groups to collect all this information in respect of every Constituent Entity and jurisdiction in order to determine whether a GloBE tax liability has arisen in respect of a particular implementing jurisdiction’. While the dimensions of this qualification are uncertain, there is the potential for a large MNE to have a GloBE return comprising hundreds if not thousands of pages. This thought should be alarming for businesses and revenue authorities.

The GIR should not require a taxpayer to collect and report all data points that are feasibly relevant for the application of the GloBE Rules to all jurisdictions that have implemented said rules. This will impose a significant burden on taxpayers and is likely to be of little benefit to many revenue authorities for whom such data will not be relevant.

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This approach is also inconsistent with how other tax systems that are based around self-assessment operate, where taxpayers are typically required to provide revenue authorities with sufficient information to undertake a risk assessment, not a line-by-line assessment of whether or not a tax liability has been computed accurately.

Core objective

The public consultation document describes the core objective as follows: *“to provide adequate information to enable the tax authority in the UPE’s jurisdiction to provide assurances to other relevant tax authorities that thresholds have been met and minimum tax has been paid, which will hopefully help to reduce likely audit activities”*. We believe the proposals outlined in this submission achieve this.

Main points of submission

- The GIR should provide foundational information only and detailed information should be contained in supporting workpapers held by the MNE.
- Use of the data should be strictly for risk assessment in relation to the GloBE.
- GloBE information should only be provided to those who strictly need it to evaluate a specific and clearly identifiable risk of underpayment of a GloBE-based tax liability.
- Precision should not be required in circumstances where there is no increase in taxation. For example, an Substance Based Income Exclusion (“SBIE”) calculation might cover only employees for which a company incurs payroll taxes and exclude potential in-scope contractors.
- The reporting mechanism should not require an MNE to report to multiple jurisdictions.
- Disclosure should be on a jurisdictional basis and not a Constituent Entity basis.
- The Inclusive Framework should explore segmenting the information reported in the GIR, as this is the best way to protect the confidential information contained in the GIR.
- In jurisdictions where a group is subject to a Qualified Domestic Minimum Top-Up Tax (“QDMTT”), this will likely reduce its potential GloBE liability in other jurisdictions to zero and the GIR requirements should reflect this.
- Where a group is subject to a qualified IIR, it may be possible to limit the information provided to jurisdictions that would only have taxing rights over any low-taxed profits through the application of the IIR. Data in relation to the potential operation of a UTPR may not be required to be provided to potential UTPR jurisdictions where the IIR provides no room for the UTPR to operate.
- The following simplifications should be considered:
 - Revenue exclusion for a jurisdiction based on percentage of total revenue of the MNE.
 - Revenue exclusion based on a specific amount.
 - Exclusion if it is ‘reasonable to assume’ that an amount is negligible in relation to the potential top-up tax liability.
 - Simplification measure based on a single item threshold with an aggregated integrity check.

- Transitional simplification.
- Information should not be required beyond that required for the use of a safe harbor where such a safe harbor is applied.
- Areas where approaches to applying CbCR vary should be identified and guidance provided.
- Changes in ownership structure should only be required to be reported if there would be GloBE implications.

General principles

We believe there are a number of general principles that should form the basis for the GIR.

Principle 1: The GIR should provide foundational information only and detailed information should be contained in supporting workpapers held by the MNE.

A parallel would be the Controlled Foreign Company (“CFC”) element of a Corporate Income Tax Return which provides only basic information of the CFC including the attributed income from the CFC.

Principle 2: Use of the data should be strictly for risk assessment in relation to the GloBE

The data used in required to prepare a GIR is specific to the GloBE Rules and hence is not relevant for assessing the application of other tax measures. Data should not be used for fishing or other purposes. It should be recognized that some of the data will be commercially sensitive. Also, MNEs should not be required to provide support for the payroll component of a SBIE claim to determine payroll and not to establish the level of top-up tax. To do otherwise will undermine the efficiency of the GloBE system.

Principle 3: GloBE information should only be provided to those who strictly need it to evaluate a specific and clearly identifiable risk of underpayment of a GloBE-based tax liability.

This is related to Principle 2 above. The GIR will contain information that is commercially sensitive, such as an MNE group’s revenue and profit (or loss) by jurisdiction. Though we recognize that tax administrations strive to maintain taxpayer confidentiality and safeguard data, from a taxpayer’s perspective the most effective way to maintain confidentiality is to limit the number of parties with access to sensitive information. The integrity of the system must allay geopolitical concerns that information may be obtained by one country which may benefit businesses closely related to that country. For this reason, as discussed below we strongly support the development of a segmented GIR.

Principle 4: Precision is not required in circumstances where there is no increase in taxation.

While linked to the framing of permanent safe harbors, where an item reduces or potentially reduces a GloBE tax liability, then an MNE Group should not be required to undertake a full exercise to determine the amount precisely, but rather may use the more conservative number. This concept is best illustrated by example.

An example would be SBIE. An MNE Group should be able to apply the SBIE for part of its Eligible Payroll and Tangible Assets. For example, an MNE Group should not be required to calculate the full amount of payroll and in-scope contractors given the compliance costs of determining in scope contractors could be significant if the terms of each contract needed to be reviewed. Thus, a disclosure based on payroll in the MNEs business

systems should suffice.

Principle 5: The reporting mechanism should not require an MNE to report to multiple jurisdictions

As with CBCR, the reporting mechanism should provide for an MNE reporting to the jurisdiction of the UPE and that jurisdiction sharing the information in accordance with the principles above.

Entity vs jurisdictional disclosure

Disclosure should be on a jurisdictional basis reflecting the blended nature of the GloBE rules and not a Constituent Entity basis.

Segmentation

The Consultation Document acknowledges that there may be cases where not all implementing jurisdictions would need all the information and tax calculations potentially reported in the GIR and that it may be appropriate to segment this information, with different information made available to different jurisdictions. We agree with this assessment and that the Inclusive Framework should explore segmenting the information reported in the GIR, as this is the best way to protect the confidential information contained in the GIR. In jurisdictions where a group is subject to a QDMTT, this will likely reduce its potential GloBE liability in other jurisdictions to zero. This is the rationale that underpins the QDMTT safe harbor discussed in *Safe Harbors and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)*, which could switch-off other reporting requirements in jurisdictions that have adopted a QDMTT.² Building on this logic, where a group is subject to a qualified IIR, it may be possible to limit the information provided to jurisdictions that would only have taxing rights over any low-taxed profits through the application of the IIR to an intermediate parent entity or through the UTPR.

We recognize that introducing a segmented GIR will create some additional compliance costs for businesses, who will need to tag the information that is provided to different jurisdictions. For this reason, we suggest that taxpayers have the option either to file a full GIR or undertake the additional work required to prepare a segmented GIR.

Simplifications

As outlined above, we considered there to be a strong rationale for significantly reducing the information included in the GIR and segment the information that will be shared with different jurisdictions. In addition, or as an alternative, there are several simplifications which could be considered, which we discuss further below.

- 1A. **Revenue exclusion based on percentage of total.** If the revenue for a jurisdiction falls below a percentage of total revenue for the MNE Group then detailed Top-up Tax calculations are not required to be disclosed in the GIR for that jurisdiction, although may be contained in supporting workpapers.

If the percentage was 5% and an MNE had revenue for the current year of €1,000m then the threshold could be €50m.

² OECD (2020), *Safe Harbors and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)*, p. 5.

- 1B. **Revenue exclusion based on a specific amount.** If the revenue for a jurisdiction falls below a specific amount, then detailed Top-up Tax calculations are not required to be disclosed in the GIR, although may be contained in supporting workpapers.
2. **Exclusion if it is reasonable to assume that an amount is negligible** in relation to the potential top-up tax liability.

A list of indicia upon which the 'reasonable to assume' evaluation could be made would need to be established. These indicia could be a percentage of revenue (say 0.01%), historical data (negligible in prior years), specific features of the business (minimal IP).

3. **Simplification measure based on a single item threshold with an aggregated integrity check.**

This is a more complex methodology but should provide a strong level of comfort that the simplification measure will not give rise to an unrecognised tax liability.

This involves the determination of a single item threshold based on a materiality factor applied to the potential increase in liability before top-up tax would become payable. It also seeks to aggregate the single item threshold by the number of times it is used to ensure that the tax capacity before top-up tax is payable is not reduced to below nil. It involves the steps outlined in the table contained in Appendix A.

4. **Transitional simplification**

Consideration should be given to a layered approach to data, such that a high level of simplification could be applied in the early years (say the first three to 2027), with additional information being required in subsequent periods (say from 2028). This may assist in MNEs putting systems in place to collect data.

Transitional CbCR Safe Harbors

The Transitional CbCR Safe Harbors agreed and published by the Inclusive Framework in December 2022 were a welcome simplification of the GloBE rules, and we commend the OECD's efforts in this space. We welcome the decision to rely on an MNE's CbC Report as the primary basis for these safe harbors but note that this is likely to result in CbC Reports facing greater scrutiny.

Since the introduction of CbCR in 2016, a number of questions about the application of CbCR have been raised and clarified by the OECD, some of which could materially affect the application of the Transitional CbCR Safe Harbors. For example, in November 2019 the OECD clarified that dividends received from other Constituent Entities should be excluded from Profit (Loss) before Income Tax and encouraged Inclusive Framework members to adopt this approach going forward. If an Inclusive Framework member has not adopted this approach, then MNE groups that file CbCR on this basis could be materially overstating their profit (or loss) and hence understating their effective tax rate.

Alongside the introduction of the Transitional CbCR Safe Harbors, we encourage both the OECD and Inclusive Framework members to identify any other areas where approaches to applying CbCR may vary and to clarify these issues through both OECD guidance and where necessary changes to domestic law or regulations.



Information should not be required beyond that required for the use of the Transitional Safe Harbor where such a safe harbor is applied. This is appropriately foreshadowed in the consultation document.

Permanent Safe Harbors

Similarly, where a permanent safe harbor applies, additional information should not be required beyond the information relevant to the permanent safe harbor.

Changes in ownership structure should only be required to be reported if there would be GloBE implications. An example would be the change of a Constituent Entity to a member of a Joint Venture Group.

Further consideration should be given to not requiring disclosure of intermediaries where the potential GloBE liability is deactivated by an up chain Qualified IIR. This would be consistent with the core principle that data should only be provided if it is relevant to the establishment of a GloBE tax liability.





Further clarification data points

There are multiple sections of the GloBE Information Return for which we consider a further clarification is needed to support the reason why certain information needs to be shared, as well as how the information should be shared as the tables do not always provide the required granularity, which is expectedly needed, and where there are questions on the formulas to be used. Below we have listed three examples of these situations.

3.3 and 3.4 – FX in Jurisdictional and Constituent Entity Computations

The following observation may be subject to change depending on the position adopted in the Administrative Guidance on the foreign currency translation paradigm adopted for the QDMTT.

Companies may have different reporting cycles for their taxes and profit numbers, e.g., profit is reported on a monthly basis and taxes only on a quarterly basis. If the functional currency in the respective jurisdiction is different than the UPE functional currency, unintended FX differences may impact the ETR calculation as demonstrated in the table below.

Month	Monthly average	Quarterly tax		Quarterly tax	
	USD-EUR FX rate	Monthly PBT, USD	@15%, USD	Monthly PBT, EUR	@15%, EUR
Jan	1,50	10 000	0	6 667	0
Feb	1,40	10 000	0	7 143	0
Mar	1,30	14 000 	5 100	10 769	3 923
April	1,40	13 000	0	9 286	0
May	1,30	3 000	0	2 308	0
June	1,60	3 000 	2 850	1 875	1 781
July	1,20	6 000	0	5 000	0
Aug	1,10	4 000	0	3 636	0
Sep	1,60	5 000 	2 250	3 125	1 406
Oct	1,05	19 000	0	18 095	0
Nov	1,40	10 000	0	7 143	0
Dec	1,30	12 000 	6 150	9 231	4 731
Total		109 000	16 350	84 277	11 841
ETR			15 %		14 %

To address this problem, GIR could provide an option whereby jurisdictional and entity ETR computations are undertaken in the functional currency applicable in the jurisdiction and only the jurisdictional Top-Up Tax (if any) is converted to the currency used in the Consolidated Statements of the UPE. This should be optional considered to be a simplification measure.

3.4.1.d Adjustments to the GloBE Income of the UPE under Article 7.1 or Article 7.2 – Identification of holders of Ownership Interests or dividend recipients (see note)

For purposes of the adjustments to the GloBE Income of the UPE under Article 7.1 or Article 7.2 insight needs to be provided into holders of Ownership interests in an UPE which is a Flow-through Entity (Article 7.1) or which is subject to a Deductible Dividend Regime (Article 7.2). The note provided in the explanation (p. 26 / 27 of the public consultation document) offers such an extensive outline on what information needs to be provided that the manner in which this information is required to be shared should be further elaborated on in the table overview itself (p. 17 of the public consultation document), rather than by means of a note.

4.1.2 Application of the IIR in respect of this Low-tax jurisdiction, sub 4.1.2.1.b. GloBE Income of the LTCE or member of JV Group

The comment regarding further elaboration also applies in respect of the GloBE Income of the LTCE or member of JV Group. On the basis of the table overview (p. 22 of the public consultation document) you would expect a relatively simple exercise of including an amount of GloBE Income. With the explanation outlined (p. 32 / 33 of the public consultation document), however, it becomes clear that this entry in itself may require further calculations to be performed, as well as further reporting, where the table does not offer this detail.



As made clear in the public consultation document – the current overview of the data points does not necessarily represent the final form of the GIR and should be seen as the first step in the process of developing common information filing and exchange requirements. We would like to emphasize that for MNE Groups it is important to have insight into the final form as soon as possible, including the further work required on clarifying the data points as MNE Group will need to start collecting this information to be able to calculate the MNE Group's GloBE tax liability and share as part of the new compliance obligation.

KPMG Contacts	Firm	E-mail
Grant Wardell-Johnson	KPMG Global	grant.wardelljohnson@kpmg.co.uk
Alistair Pepper	KPMG in the US	alistairpepper@kpmg.com
Vinod Kalløe	KPMG in the Netherlands	Kalløe.Vinod@kpmg.com
Claus Jochimsen	KPMG in Germany	cjochimsen@kpmg.com
Lieke Mutsaers	KPMG in the Netherlands	mutsaers.lieke@kpmg.com
Ivor Lacroix	KPMG in the Netherlands	Lacroix.Ivor@kpmg.com
Conrad Turley	KPMG in China	conrad.turley@kpmg.com
Alia Lum	KPMG in Australia	alum@kpmg.com.au



Annex A – Simplification measure based on a single item threshold with an aggregated integrity check

In the example below, an MNE would be able to take up to 40 items in a jurisdiction where it is reasonable to assume that the amount of income or expense adjusted for the GloBE calculation was less than €50,000 without doing further work. This is based on a materiality factor of 2.5% applied to the potential increase in tax before Top-up Tax would be payable based on Profit before Tax from a Qualified CBCR (as defined in the Transitional Safe Harbor rules), adjusted for Uncertain Tax Positions, non-covered taxes in the Income Tax Expense and items where it is not reasonable to assume they are below the threshold. This amount is grossed-up to determine an income or expense amount.



Step 1	Determine the single item threshold for ‘adjustment income and expense’	
(a)	Take the PBT from the Qualified CBCR	10,000,000
(b)	Take the Aggregate Income Tax Expense (“ITE”) from the Qualified Financial Statements for the jurisdiction	1,900,000
(c)	Adjust for (i) UTPs, (ii) non-covered taxes in ITE and (iii) known ‘above the threshold’ items. That is items where it is not reasonable to assume they are below the threshold.	100,000
(d)	Estimate threshold Tax Expense before TUT at (Step 1(a) x 15%)	1,500,000
(e)	Determine the estimated potential increase in tax before TUT is payable – Step (b) minus (c) minus (d)	300,000
(f)	Apply a materiality factor to determine the tax effected single threshold amount at Step 1(e). Here it is assumed to be 2.5%.	7,500
(g)	Gross-up to determine the single item threshold	50,000
Step 2	Determine the maximum number of available items where it is reasonable to assume that the item falls below the single item threshold	
(a)	Take the amount in Step 1(e) divided by 15% (300,000 divided by 15%)	2,000,000
(b)	Take the single item threshold in Step 1 (g)	50,000
(c)	Maximum no. of items available where it is reasonable to assume that the item falls below the single item threshold (Step 2(a) divided by Step 2(b)).	40