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Submission File

2 December 2019

Organisation for Economic Co-operation and Development (OECD)
International Co-operation and Tax Administration Division
Centre for Tax Policy and Administration
2 rue Andre-Paris
Paris
France

BY E-MAIL: taxpublicconsultation@oecd.org

Dear Sir/Madam

COMMENTS ON THE GLOBAL ANTI-BASE EROSION PROPOSAL – PILLAR TWO

1. We present our comments and submissions on behalf of the South African Institute of Chartered Accounts' (SAICA) Transfer Pricing Committee on the public consultation document 'Public consultation document: Global Anti-Base Erosion Proposal (GloBE) - Pillar Two' released by the OECD on 8 November 2019.
2. We thank the OECD for the opportunity to provide constructive comments in this regard. SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges.

BACKGROUND

3. In May 2019 the Inclusive Framework agreed a Programme of Work for Addressing the Tax Challenges of the Digitalisation of the Economy. The Programme of Work is divided into two pillars: Pillar One addresses the allocation of taxing rights between jurisdictions and considers various proposals for new profit allocation and nexus rules; Pillar Two (also referred to as the "Global Anti-Base Erosion" or "GloBE" proposal) calls for the development of a co-ordinated set of rules to address ongoing risks from structures that allow MNEs to shift profit to jurisdictions where they are subject to no or very low taxation.
4. SAICA commented on the "Unified Approach" under Pillar One that is based on the significant commonalities between the various profit allocation and nexus proposals.
5. The current submission by the SAICA's Transfer Pricing Committee sets out our comments on the Pillar Two proposals.

COMMENTS ON THE PROPOSALS

Three technical design aspects

6. For purposes of this consultation, comments were requested by the OECD on three specific technical design aspects of the GloBE proposal:
 - a) the use of financial accounts as a starting point for determining the tax base under the GloBE proposal as well as different mechanisms to address timing differences;
 - b) the extent to which an MNE can combine high-tax and low-tax income from different sources taking into account the relevant taxes on such income in determining the effective (blended) tax rate on such income; and
 - c) stakeholders' experience with, and views on, carve-outs and thresholds that may be considered as part of the GloBE proposal.
 7. Given the broadness of the above aspects and the number of additional sub-questions posed in the discussion document, we are of the view that the timeframe afforded (less than one month) to provide comments is unreasonable. Although we understand the immense pressure that the OECD is under in order to resolve the GloBE problems, receiving comments that are based on hypothetical or assumed impact (rather than from actual impact studies), would not be of no value to anyone and could, in fact, cause greater harm than good considering the broad impact of the proposed changes.
 8. For example, from a South African perspective there would appear to be a potential overlap between the "undertaxed payments rule" (denial of a deduction or imposition of source based taxation including withholding tax for a payment to a connected person if that payment was not subject to tax at or above a minimum rate) and the "subject to tax rule" (subjecting a payment to withholding tax or other taxes at source and adjusting eligibility for treaty benefits on certain items of income where the payment is not subject to tax at a minimum rate) in the case of deductible payments such as royalties that might be treated as both not subject to tax and undertaxed.
 9. In addition, South Africa (and many other African countries) has exchange controls in place, which further limit the ability of a South African resident to remit payments, such as royalty fees, to overseas connected persons. The impact of such rules would need to be tested in light of the GLoBE proposal and sufficient time is required to do this. Furthermore, South Africa has a sophisticated system of Controlled Foreign Company (CFC) rules in place and the GLoBE proposal for the definition of a new tax base, based on financial accounts, would need to be considered.
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| <ol style="list-style-type: none">10. <u>Submission:</u> In order to provide valuable comments that can be relied upon to make informed decision on the various GloBE aspects, we propose that the deadline for submission be extended to 30 April 2020.11. This will ensure that more robust and credible responses will be provided which the OECD can then use to inform its further actions. |
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Yours sincerely

Christian Wiesener
Chairperson: Transfer Pricing Committee

Dr Sharon Smulders
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The South African Institute of Chartered Accountants