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International Co-operation and Tax Administration Division
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Sent via email: taxpublicconsultation@oecd.org

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Subject: Comments on OECD secretariat's Global Anti-Base Erosion (GloBE) Proposal under Pillar Two

BDO is one of the largest full-service audit, tax and advisory organisations in the world. We have over 80,000 people across 1,591 offices in 162 countries. Our global organisation focuses on supporting entrepreneurially spirited, ambitious businesses.

We appreciate the opportunity to submit our comments on the public consultation document titled **"Global Anti-Base Erosion Proposal ("GloBE") - Pillar Two"** that was released by the OECD on 8 November 2019 and provide our input into the OECD's ongoing work in respect of this important tax policy matter.

We welcome the initiative taken by the OECD to reconsider whether the current international tax framework remains effective for a modern, highly digitised economy. We concur with the OECD that the current proposals (both Pillars One and Two) go well beyond the digital economy and apply to a wider range of businesses.

There is widespread consensus that as businesses seek newer, improved, more efficient ways of doing business, the existing international tax architecture has not kept pace with the rapidly evolving business landscape. A review of the international tax framework presents significant scope for both improvement and simplification, driving a fairer tax system that better reflects modern business reality and is also simpler to administer for global businesses of all sizes.

We support the OECD's efforts to create a fairer tax system. In addressing this, it is appropriate to consider whether the profits of international businesses should be subject to a minimum rate of tax. This would establish a floor for tax competition among jurisdictions and, thereby, reduce the incentive for taxpayers to engage in practices that take advantage of lower tax rates. However, we believe that it is the behaviour of the taxing jurisdictions (i.e. the sovereign nations) and their policy-makers that the OECD should seek to influence, rather than focusing its efforts in changing taxpayer behaviour by disincentivising the use of certain jurisdictions in the hope that sovereign nations will adjust their rules accordingly. The current proposals, which have the potential to create significant compliance obligations for both taxpayers and taxing authorities, do not appear to us to be the most direct way of preventing a "race to the bottom" on corporation tax rates. We urge the OECD to consider alternative approaches to achieving the objective (as discussed in detail below).

Overall, delivering simplicity in administration and seeking to ease, rather than increase, the compliance burden and uncertainty for taxpayers is of paramount importance in the current increasingly complex global environment. This overarching principle should be reflected in the design of all aspects of the new rules if the OECD is to meet its mandate of encouraging trade and economic growth.

The OECD has set a challenging timescale to seek consensus agreement between the Inclusive Framework members. Given the potential complexity embedded in the proposals, we urge the OECD not to rush this exercise and to take time to consult (repeatedly, if necessary) with businesses and stakeholders. Tax law that is implemented quickly without full thought creates an environment of uncertainty for taxpayers and stifles key investment decisions. The Pillar 2 proposals would apply in a multilateral context, and the effect of any deferral of key investment decisions by global businesses could have a much more significant impact on the global economy. All interested parties should be given a chance to consider the impact of these rules on their business operations and contribute to the development of the proposals, and the same holds true for those jurisdictions whose economies are likely to be impacted adversely if a minimum rate of tax is implemented. Given what is a very challenging timeframe, we believe it may be helpful to focus on resolving the issues under Pillar One and achieving consensus between Inclusive Framework member countries on the broad approach to achieving the policy objective under Pillar Two before the practical and implementation elements of the Pillar Two proposals are addressed in detail.

Once feedback on the broader design and implementation aspects of the proposals has been obtained through the current consultation, a further consultation would be highly beneficial and should be supported by some form of modelling/impact assessment exercise to see how these proposals are likely to affect both digital and non-digital businesses. Businesses would need to be guided through the application of the rules by use of worked examples for them to fully understand how the rules are meant to work in practice, and what impact these will have on their effective tax rates. Businesses should be allowed to provide input at that detailed level as well as at the current conceptual stage.

Our comments in response to the public consultation on Pillar Two are set out below. We hope this response will be of assistance in highlighting those areas which need to be considered as part of a further detailed consultation process.

We have developed this response on behalf of a BDO global working party. We believe it is essential that we provide the OECD with our thinking on its consultation in this area, as any reform of international tax affects our diverse client base and stakeholders. We would also welcome an opportunity to attend meetings and webcasts with the OECD, in order to ensure that an environment is developed that will help international businesses get certainty on their tax position and effectively manage their tax profile while allowing tax authorities to collect the tax revenues required to fuel their respective economies.

If you have any questions or would like any further detail, please do not hesitate to get in touch with us. We look forward to working with you and supporting you as you continue your work in this area.

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Executive summary

- Simplicity should be the overriding principle in the design of the Pillar Two proposal. Following the OECD BEPS project and associated unilateral and multilateral measures, the tax complexity of businesses operating internationally has increased significantly. This makes it very difficult for taxpayers to plan and execute business plans that involve cross-border activity.
- Focusing the application of the Pillar Two proposals on specified 'blacklisted' territories would exponentially reduce the complexity for taxpayers without diluting the ability to achieve the policy objectives. This new blacklist could be maintained by the OECD, based on principles that it would define (e.g. territories that have statutory tax rates below an agreed threshold, and/or territories where there is a low effective tax rate after the application of reliefs and incentives – although certain approved incentives may be excluded). Our experience is that blacklists have been effective in influencing policy in jurisdictions in other circumstances, and their use would appear to align to the objectives of Pillar Two.
- Complex legislation which is difficult for taxpayers to interpret and apply stifles key investment decisions. The current Pillar Two proposals could create enormous complexity and damage the ability of international groups to make informed investment decisions, damaging the global economy.
- We suggest the OECD clearly delineates its work and aspirations on each of the underlying Pillar 2 components. In particular, two components are transactional and highly burdensome in practice: the undertaxed payments rule and the subject to tax rule. Both of these components should be considered separately from the Income inclusion rule.

Overarching comments

1. Simplicity and practicality

We firmly believe that for the rules to bring about real change, simplicity is paramount. When there is tax simplicity, taxpayers are better able to comply and structure their affairs in line with the policy objective.

We acknowledge that tax should not be the predominant driving force in investment decisions of international businesses. However, the complexity of tax regulations and compliance should not be a reason that dissuades or delays an international business from a particular investment path that otherwise makes sound commercial sense.

In our experience, complex and evolving legislation which is difficult for taxpayers to interpret and apply stifles key investment decisions. The current Pillar Two proposals have the potential to create enormous complexity and damage the ability of international groups to make informed investment decisions. Investment is a key driver of economic growth, and any impact on global investment could adversely affect the global economy. Therefore, it is of critical importance that the Pillar Two proposals are tightly targeted, and sufficiently clear in their application, so that they do not prevent businesses from moving forward with their investment plans.

Overall, the Pillar Two proposals, as currently envisaged, contain many areas that require consensus on a range of detailed technical issues: in particular, agreeing to a common tax base to which an effective minimum tax would apply. This will require considerable investment of time and effort in agreeing what is being proposed. The current proposals focus predominantly on the income inclusion rule. Details of the undertaxed payments rule, the switch-over rule and the subject to tax rule are still to be published, and there are likely to be significant complications, on both the individual application of each rule as well as their interactions. In particular, these other three rules have the potential to present much greater administrative burdens to taxpayers and the risk of increased double taxation. Focusing on one of these rules may be pragmatic in the short term.

The proposals may require substantial effort from taxpayers to prove that no income inclusion or deduction denial is appropriate, even where it may be conceptually 'obvious' that it is not the policy intent for an adjustment to apply (for example, where the income owner is clearly 'high tax'). This could create a dynamic whereby many taxpayers are going through a similar exercise each year to 'prove' that no adjustment is required for profits arising in a particular jurisdiction.

Moreover, the overriding concern seems to be in preventing a 'race to the bottom' on corporation tax rates: not something that is within the control of taxpayers. Rather, it is in the control of taxing jurisdictions. The Pillar Two proposals appear to be seeking to influence the taxing jurisdictions through the imposition of rules on taxpayers. We question whether this approach to achieving the policy aims of Pillar Two is the most effective. We believe that a better approach would be for the OECD to develop guidelines that directly influence the behaviour of the taxing jurisdiction.

To prevent this 'race to the bottom', the OECD could consider creating and securing global endorsement for a blacklist of those jurisdictions that do not comply with standards defined by the OECD. The consequences of a country, or particular regimes of a country, being on the blacklist would be that rules similar to the current Pillar Two proposal would apply. However, the rules would <u>only</u> apply to entities or branches in jurisdictions that appear on the blacklist or to transactions with those entities or branches. This would exponentially decrease the complexity of applying the Pillar Two rules. For example, it would remove the need for an international business to 'prove' that no adjustment is required in respect of profits accruing in high tax jurisdictions.

The policy objectives of Pillar Two would determine the parameters for this new blacklist. These policy objectives may include a reference to a particular minimum statutory rate of tax, rules around the determination of the taxable base, 'appropriate' use of incentive regimes, the possibility of exceptions for businesses operating in certain sectors, etc. It would be critical that any guidelines on such a blacklist did not undermine existing incentive regimes that are understood to be compliant with the BEPS Action 5 standard on harmful tax practices. That would have an adverse impact on international trade and investment.

The OECD would 'own' and maintain this blacklist, enabling it to monitor and influence international policy in a much more dynamic way than simply relying on a fixed set of Pillar Two proposals applicable (in concept) to all territories. The blacklist itself would become a policy lever, which could be altered as businesses continue to evolve, to ensure that the Pillar Two objectives continue to be achieved. This would be a far simpler mechanism than amending the global implementation of the Pillar Two rules themselves after their initial implementation to ensure the ongoing alignment of international tax policy with the Pillar Two aims.

The use of such a blacklist concept would also dissuade taxpayers from structuring their affairs in blacklisted countries (as any tax benefit would be neutralised) - keeping competition centred to non-tax aspects. However, where a business was investing outside of the blacklist of territories and, therefore, where it might reasonably be expected that the investment decision was not driven by tax considerations, it would not be burdened with complex compliance obligations.

Over time, we envisage that the effect on taxing jurisdictions would be the same; namely, those territories on the blacklist would seek to be removed from it to protect their ability to attract foreign investment. However, a blacklist approach achieves the Pillar 2 objective in a much more focused and sustainable way.

The OECD's use of the blacklist approach has worked well and changed countries' policies in other areas, and we think this approach could work in this situation as well. We consider it to be a much more practical way of dealing with the perceived challenges in the current international tax framework, and confining the Pillar 2 compliance and administration to only those regimes that are really the target of the policy objective.

2. The concept of a minimum tax rate

Inherent within the Pillar Two Proposals is the concept of a minimum 'acceptable' tax rate. The current document does not suggest what the minimum tax rate may be - we understand this is a matter for political agreement by the representative government ministers. In many ways, confirming or somehow signaling the likely minimum rate could help to clarify the detailed design of the rules in terms of how broadly or narrowly they may be targeted. There is a big difference in practice between a global minimum tax rate set at 10%, and one set at 20% - not least in terms of the entities that could (conceptually) fall within scope, or jurisdictions that are seemingly not at the "adequate" minimum rate of tax. It is worth noting that the use of 15% as the illustrative rate in the examples may be objectionable to a number of territories.

We have a concern that by setting a global minimum tax rate (at any rate), the Pillar 2 mandate is essentially determining economic and tax policy for countries around the world. If a minimum rate of tax is set, jurisdictions below this rate will be affected - investment into those countries may be reduced and moved to other countries. This may be problematic for emerging countries who are using lower tax rates or incentives to reduce a company's tax burden in an effort to bring investment, jobs etc. into their country. In particular, some may argue that Pillar 2 is inherently "unfair", allowing economically stronger countries to force a minimum rate agenda on smaller economies. The minimum rate thresholds could have a real economic impact to those countries. There is a question here as to what the OECD is trying to safeguard – the global economy or local economies.

The consultation paper does not address how tax incentives are dealt with. For example, tax credits for R&D can (depending upon how the incentive is recognised under the relevant GAAP) reduce the effective tax rate (ETR) (depending on GAAP in the jurisdiction) well below the main business tax rate. Therefore, on the surface, businesses in many jurisdictions may be below the minimum tax threshold. However, such incentives have separate policy objectives (not all tax driven), such as increasing investment, talent, etc. into the local economy.

Beyond tax, many countries offer 'grant' programs (investment funding, R&D funding, staff funding, etc.). An increase in statutory tax rate could be offset by a grant for certain business activities, yielding nil economic impact for a taxpayer and the government. True tax havens may have limited alternatives, but will other countries seek to offer other incentives? The OECD would need to assess whether the use of alternative (non-tax) incentives is 'acceptable' and how it would draw the line/monitor compliance. Will this drive more grant-based incentives that are subjective, highly administrative, and distort the playing field for business?

Our proposed approach of a centrally maintained blacklist could eliminate some of the challenges around alternative incentives by ensuring that the OECD reflects on the overall package of incentives when determining whether a country should appear on the blacklist. This assessment could be done in a much more dynamic way than a set of static Pillar Two proposals enacted into international law.

3. Administrative burden

The program of work made a commitment to improve compliance and administrability for both taxpayers and tax administrations, and to neutralise the impact of structural differences in the calculation of the tax base.

The simplification being suggested in the proposals is to start with relevant financial accounting rules and subject those to agreed adjustments as may be necessary in determination of the tax base.

Given the inherent complex technical issues in using financial accounting rules as a starting point, our view is that existing accounting rules used by taxpayers in the preparation of their accounts should be respected. To avoid businesses preparing a separate set of accounts to conform to the OECD's proposals (either at the consolidated level or local country level), the OECD could recommend a "standard template of adjustments" that should be applied to the amounts recorded in the financial statements. The resulting figure, after applying the adjustments in the standard template, should give the closest approximation of a common way of determining a common tax base. This approach could benefit not only those taxpayers that do not have sophisticated financial and tax systems and teams but also those large organisations that would welcome an approach that requires less administration in this respect.

There are also arguments to suggest that the tax base determination should be done only at the head office jurisdiction. While this is not entirely in line with the proposals, it could possibly be managed by supplementing existing CFC rules (assuming these are BEPS Action 3 compliant) with enhanced CFC rules which build on the current substance exemption by factoring in that companies need to be subject to a minimum tax in the jurisdiction.

We consider that the complexity of global tax reporting will increase substantially. Even with an agreed framework for determining the financial income and the tax base as a starting point, multinational groups will have a very complex process to undertake on an annual basis to make this work effectively. Calculating a global minimum tax on either a jurisdictional basis or an entity-by-entity basis would be a very significant compliance effort. HQ and subsidiary jurisdictions would need to agree a mechanism for reporting, for tracking, and for potential top-up payments that would occur as a result of the minimum tax.

4. Modelling and impact assessment

It is imperative that the impact of Pillar Two proposals should be modelled to understand its wider implications not only on the effective tax rate of multinational businesses but also more generally on global trade, investment and economic growth. Particular attention should be paid to its impact on the ability of under-developed and developing nations to remain competitive on cross-border trade.

Pillar Two proposals may appear to shield developing countries from pressure to offer inefficient tax incentives. However, they are also likely to limit their ability to implement tax incentive regimes to attract much-needed foreign investment to fuel their economies: whether this is intended and appropriate needs careful consideration.

Those businesses that have already made long-term investments in developing nations modelled on the back of tax breaks and long-term tax and monetary incentives are likely to be adversely affected if any future incomes in those countries will be subjected to tax as a result of Pillar Two proposals. Therefore, the OECD should consider including grandfathering rules within the Pillar Two proposals to protect investments that were made before the proposals are implemented under domestic tax law of the countries concerned.

What the minimum rate will be set at and how it will be calculated will be subject to widespread debate. We consider that the minimum tax rate should be kept low in order to minimise the risk of unintended adverse consequences and to minimise the associated compliance burden for the large majority of businesses that do not operate through no- or low-tax territories.

5. Interaction with Pillar One proposals

The Pillar Two proposals are designed to counter profit-shifting by multinationals. The Pillar One proposals are centred on the allocation of taxing rights among countries. There is no discussion in the Pillar Two consultation document on the interaction of the two Pillars, but the OECD seems very keen on both Pillars being finalised and consensus being achieved by the end of 2020.

The fundamental question that has not been addressed is whether the reallocation of taxing rights under Pillar One will occur before or after the application of Pillar Two. From a practical point of view, any allocation under Pillar One is likely to require multilateral agreement between tax authorities, which is likely to take time before finality is achieved. This could potentially delay the application of Pillar Two rules on the relocated profits. The OECD should, therefore, consider how this situation would be practically managed.

Taxpayers could be immersed in complex tax compliance involving the determination of what amount is taxed where, at what rate and to which country’s tax authority it is paid etc.: all carried out well after the tax year is over and the domestic tax return has been prepared and filed. This will make business planning very complex for taxpayers; not just in terms of forecasting tax payments but in terms of planning cash flow and evaluating the impact of business decisions.

Further thought needs to be given to centralising and streamlining international business tax compliance in a way that the objectives of both Pillar One and Pillar Two are met with minimum disruption.

6. Double taxation

Under Pillar One it was deemed essential to consider existing and possible new approaches to dispute prevention and resolution, including mandatory and effective dispute prevention and resolution mechanisms to ensure the elimination of protracted disputes and double taxation. Under the Pillar Two proposals, a key part of dispute prevention mechanisms will be ensuring that a consistent tax base is used. There is a further risk of double taxation when the income inclusion, undertaxed payments and the subject to tax rules operate in tandem.

7. Scope limitations

The proposals are set to apply to all taxpayers in the absence of a threshold or exclusion. We believe, and as described in detail in our response to Pillar One consultation, if the proposals are kept simple and easy to implement and administer, then there should not be a need for a threshold. This would put all taxpayers on a level playing field and would avoid a two-tier tax system. Therefore, we urge the OECD not to adopt any thresholds but rather to seek to craft rules that are simple (for example through a broad simplification measure such as a 'blacklisting' approach), and that can be easily implemented by taxing jurisdictions and administered by taxpayers.

It might further help with simplicity if the OECD keeps the proposals focussed on narrow situations that give rise to base erosion and profit shifting. As significant work has already been undertaken under the BEPS initiative (and some of the implementation is still ongoing not only with OECD countries but in Europe as well through the ATAD/ATAD 2), these proposals should supplement the existing BEPS recommendations (e.g. Action 3 on CFCs) and not seek to 're-invent the wheel'. For example, there could be an exclusion from the operation of these rules for jurisdictions that have BEPS-compliant CFC rules in the head office jurisdiction and those that comply with the EU's Anti-tax avoidance directive. We acknowledge that this could be seen as a dilution of the policy objective, but this may be a necessary compromise to ensure the rules are not overly burdensome on taxpayers (unless our proposed blacklist approach is pursued).

Answers to consultation questions

Tax base determination
Importance of a consistent tax base

Accounting standards can differ widely depending on the jurisdiction. Depending on the GAAP chosen, different financial statement results can occur, which can distort ETR computations. It is common when there is a foreign parent that GAAP used for financial statement reporting/auditing is prepared in US GAAP or IFRS (or some other 'group GAAP'), but for local tax reporting local GAAP is used. While we agree with the recommendation that a consistent approach needs to be used, if books and records would need to be converted to different GAAPs, this will cause undue administrative burdens. In practical terms, MNEs are more likely to conduct proper adjustments from group GAAP to local GAAP only where the relevant entity/jurisdiction's tax is material to the consolidated accounts. This can leave out a significant number of entities and jurisdictions. Also, the question is raised that if accounting income is used as the base, would this require audited statements at the entity level?

Given that there can be material differences between income that is computed under accounting principles and that computed for tax purposes, it is important to keep to a measure of effective tax rate that is consistently applied. We agree with the OECD's recommendation that the use of financial accounts as a starting point can provide an appropriate income base (for the computation of an effective tax rate) and would simplify compliance (reducing costs) under the Pillar Two proposal. For this to work as desired, every entity in the world would have to prepare their financial accounts under a specific set of standards; any variation in the use of accounting standards or the treatment of items under domestic standards would leave room for interpretation and would give inconsistent results.

The above is predicated on the fact that the financial data required for determining a consistent tax base is readily available. Any proposal that requires businesses to prepare additional data (under specific accounting standards) is likely to be administratively burdensome, costly and likely not to satisfy the policy objectives of having a common tax base. It would also be challenging for local tax authorities to police the application of GAAP that is not native to their own territory from the perspective of reviewing compliance.

For simplicity, we consider the data required for determining the tax base should be based on world-wide consolidated financial statements prepared under the GAAP of the parent entity. Any adjustments that are made to these would already take into consideration the financial information from the subsidiaries, as the financial data of the subsidiaries will have been included in the consolidation.

Businesses that do not consolidate the results of their subsidiaries, or are not required to prepare consolidated financial statements, would need to prepare a statement picking items from their financial statements and dropping them onto a predefined template that is aligned to what the results would look like if prepared using an acceptable GAAP. This approach seems to be a potential solution to get everyone using a common standardised base: and may be more acceptable to different jurisdictions that seeking to create a Common Consolidated Corporate Tax Base as the EU has tried but (to date) failed to achieve.

Adjustments
We recognise the OECD's consideration of differences that arise when using accounting and taxable profits. One of the areas considered is the treatment of losses carried forward which could distort the calculation of the tax base from year to year. This is likely to be an issue for capital-intensive businesses that have losses in initial years that are likely to be used against

future profits. The year in which these losses are offset against profits will give a distortive picture of the effective rate of tax, and these differences will need to be considered when determining the tax base in the later years.

There is a proposal to allow businesses to carry forward any excess tax liability (tax they paid above the minimum rate in prior years) into future years. The proposal would allow businesses to claim a refund if in a later year they have paid excess tax. Further details are required on the practical aspects of how this will be administered, including in light of the business realities faced by many taxpayers such as taking account of legal mergers and business transfers.

There are proposals to track these adjustments through a memorandum to be prepared by the parent company which is likely to add significant administrative burden.

Use of deferred tax accounting could potentially reduce the need for additional information to be prepared (e.g. separate memorandums etc.). We consider this to be the case given deferred tax accounting is done on an entity level which can be a useful tool in determining the effective tax rate at the entity level. This would be simpler than extrapolating what the tax should be using the effective tax determined at a consolidated level and then using multi-year averaging or similar such mechanisms to even out the year-on-year distortions that arise due to temporary differences.

Blending

If our proposed blacklist approach is pursued, the need to address the question of blending, which has the potential to be very complex, should fall away. Blending is a simplification mechanism, but would largely be redundant if the rules were focused only on entities in a handful of jurisdictions.

If our proposed blacklist approach is not pursued, then we consider that the question of blending needs to be viewed in conjunction with the assessment of what any minimum rate should be. We do not consider it is likely to be possible to assess these matters in isolation, as the minimum rate inherently informs what the appropriate approach might be from a blending perspective to mitigate the compliance burden whilst still achieving the overall policy objective.

We consider that it would be administratively least burdensome to blend at the global HQ level, because taxpayers would not have to look at every single entity in their group and apply the rules to each entity. This will avoid the need to have excess taxes paid in some jurisdictions (over and above the minimum tax) and insufficient tax (less than the required minimum tax) in other jurisdictions and not be able to credit the excess payments against the underpaid taxes in other jurisdictions in a tax year. We acknowledge that a balanced approach will need to be adopted, as blending at the global level may partially weaken the goal of countering low taxes, given the choice of jurisdiction. Whichever approach is used, global, jurisdictional or entity, there are significant technical issues, including how to allocate income between transparent entities and between the HQ entity and a foreign branch.

We consider that steps could be taken to complement a worldwide blending approach in ensuring that the policy objectives are met. For example, altering existing CFC rules so that payment of a minimum rate of tax is a precondition (in addition to the existing substance requirements) for the profits of a CFC to be considered as being exempt from a CFC apportionment.

Carve outs and thresholds

Carve-outs
Any principles for carve-outs must be clear and consensus-based. There could be valid rationale for exclusion of certain sectors, e.g. charities or collective investment where tax neutrality for a pooled investment vehicle is key to facilitate international investment from multiple territories. The principles for exclusion will, however, need further definition to enable progress to be made.

The consultation document does not provide sufficient detail about the potential design of the other three rules, i.e. the switch-over rule, undertaxed payments rule or subject to tax rule to enable substantive comment. In the absence of additional details on design elements of these rules and their interaction with the income inclusion rule, it is difficult to comment on what impact, if any, the operation of these rules would have on a specific industry or whether specific carve-outs should be included.

Pending finalisation of all four elements of the Pillar Two proposal, work done so far through the implementation of the BEPS package on base erosion and profit shifting should not be rendered ineffective. It is, therefore, important that any carve-outs considered should be proportionate and take account of the work done so far under BEPS (i.e. the work done on CFCs) and behavioural changes introduced by taxing jurisdictions on BEPS Action 5 in relation to harmful tax practices.

Thresholds
We consider it is first necessary to assess why a size threshold, if any, may be appropriate. It would appear that the intent in setting a size threshold is to retain the current system for smaller businesses where the OECD's Pillar approach could otherwise represent an onerous administrative burden.

It may be better to approach the issue from another perspective. Namely, if Pillar Two could be developed in a way that was not administratively burdensome (for example through the proposed blacklist approach), is a size threshold necessary? In our view, a size threshold should not be used as a policy rationale for not seeking to drive simplicity into Pillar Two proposals. Eliminating the size threshold may ensure that the proposals are applied consistently, especially to fast growth/scaling businesses that currently may not meet the agreed threshold but are likely to in the future.

We acknowledge the complexity of the issues being addressed in the proposals. However, it should not be automatically assumed that any solution to those challenges must be complex such that a size threshold is required to protect smaller businesses from an undue administrative burden. We consider the ambition should be to create rules which do not require a size threshold to work effectively.

Any size threshold which is set will ultimately be arbitrary. Wherever that dividing line is drawn, there is a risk of creating a two-tier tax system and artificial distortions in the competitive position of businesses either side of the line.

If thresholds are considered, they would need to be considered individually for each component of the Pillar Two proposals. From a practical perspective, any thresholds should be applied by reference to prior year data, or an averaging of prior year data.