Public consultation on the Global Anti-Base Erosion Proposal (GloBE) – Pillar Two

<u>Submission by the following organisations:</u>

ActionAid
Alliance Sud
Canadians for Tax Fairness/ Canadiens pour une fiscalité équitable
Centre national de coopération au développement (CNCD-11.11.11)
Church Action for Tax Justice
Comité Catholique Contre la Faim et pour le Développement – Terre Solidaire (CCFD-Terre Solidaire)
Diakonia
Ekvilib Institute
European Network on Debt and Development (Eurodad)
Finnwatch ry
Global Alliance for Tax Justice (GATJ)
Oxfam International
Plateforme Paradis Fiscaux et Judiciaires
Tax Justice Europe (TJ-E)
Tax Justice Network Norway (TJN-Norway)
Tax Justice NL
Tax Reconciliations
Vienna Institute for International Dialogue and Cooperation (VIDC).

Overall comments

We, the undersigned organisations, welcome the growing recognition of the shortcomings of the transfer pricing system and the arm's length principle. Furthermore, we agree with the perspective expressed by some members in the Inclusive Framework that the measures set out in the BEPS package "*do not yet provide a comprehensive solution to the risk that continues to arise from structures that shift profit to entities subject to no or very low taxation.*"[1]

We also welcome the growing recognition of the value of taxing multinational corporations on the basis of their global consolidated profits, with taxing rights being allocated between governments based on an agreed formula and supplemented by a minimum effective tax rate. We believe that such a system should be introduced as the central approach to taxing profits of multinational corporations, and it should replace the existing transfer pricing rules and the arm's length principle. This is, in our view, the only way to fulfil the G20's stated aim of ensuring that "*profits are taxed where economic activities occur and value is created*".[2]

However, we consider that as it stands, the OECD Secretariat's Proposal for a "Unified Approach" (Pillar One) is a missed opportunity to address the fundamental flaws in the international tax system. We believe that Pillars One and Two must be seen as an holistic package, and we believe it is vital that ambitious outcomes are delivered under both pillars.

With this in mind, we find it very concerning that the progress under Pillar Two until now seems very limited. We would have hoped that at this stage a more concrete and comprehensive proposal would have been developed to serve as the basis for discussion. Therefore, we urge the OECD Secretariat and all members of the Inclusive Framework to invest the resources necessary to ensure that ambitious and fully functional outcomes can be delivered under both Pillar One and Pillar Two within the timeframe of the process. Urgent action is required, especially keeping in mind that governments are currently losing an estimated US$500 billion per year due to corporate tax avoidance.[3] Delays would also increase the risk that the race to the bottom on corporate taxation continues during the period of inaction.

Over the last 40 years, the global average corporate tax rate has dropped from above 40 per cent to well below 30 per cent. At the same time, the statutory corporate tax rates rarely show the full picture, since the race to the bottom is exacerbated by drops in the effective corporate tax rates paid by corporations. Although the availability of public data is limited, there are clear indications that despite efforts to combat corporate tax avoidance, effective corporate tax rates paid by multinationals have been dropping since the financial crisis.[4] Pillar Two provides an important opportunity to stop this race to the bottom and prevent further harmful tax competition between governments. It can do so by setting a minimum effective tax rate at a fair level that is high enough to stop the global race to the bottom. For example, we note that the highly respected Independent Commission for the Reform of International Corporate Taxation has suggested that such a rate be set at 25per cent.[5] If the minimum rate is set at a significantly lower level, it would introduce the obvious risk that instead of stopping the "race to the bottom" on corporate taxation, governments would engage in a "race to the minimum".

In terms of how the minimum effective corporate tax rate should be designed, we would like to highlight the following key points:

- **Giving priority to source country rules**. The consultation document talks about the option of introducing an "ordering rule" to regulate the implementation of the different components of the proposal.[6] In the event that such an ordering rule is introduced, we believe that priority should be given to source country rules, which in this case would be the tax on base eroding payments. This is important in light of the fact that developing countries are primarily source countries. Furthermore, it would reflect the principle that corporations should pay tax where they do business. In this context, we also find it very concerning that the Global Anti-Base Erosion (GloBE) Proposal seems to have a stronger focus on the residence country rule (the income inclusion rule), compared with the source country rule (the tax on base eroding payments).

- **Ensuring that the rules are not undermined by "blending"**. As pointed out in the consultation document, worldwide "blending" would make the rules "*less effective in creating a floor for tax competition.*" Therefore, we believe the rules must be applied on a jurisdiction by jurisdiction basis. This would prevent that multinational corporations can offset undertaxed profits in low-tax jurisdictions with profits taxed in other jurisdictions where the tax rates are higher than the minimum.

- **Ensuring that the rules are easily administrable**. As the GloBE proposal is developed further, a careful and thorough design process will be vital to ensure that the rules become clear and easily administrable.

- **Making sure that the effectiveness of the rules is not undermined by carve-outs.** As noted in the Work Programme for the ongoing negotiations, carve-outs would undermine the effectiveness of the rules. This includes carve-outs based on the BEPS Action 5 standards on harmful tax practices (such as carve-outs for patent boxes).[7] Therefore, we find it important that carve-outs are not incorporated into the rules under Pillar Two.

- **Ensuring transparency**. We believe that transparency is urgently needed, both in relation to the ongoing negotiations of new international tax rules, and in relation to the tax rules themselves. Specifically, we believe that:
    - Impact assessments of the proposed new rules should be made public, to allow all relevant actors including governments, citizens, journalists, parliamentarians and civil society organisations, to better assess how the proposed rules will affect them.
    - Any intergovernmental negotiation about new global tax rules should be open to participation by observers, and negotiating texts should be available to the public.
    - The financial accounts of multinational corporations should be made public. In addition to financial accounts, public country by country reporting should be introduced, and should be integrated into the starting point for determining the tax base. This transparency should apply to all large corporations[8], rather than be limited to those with a minimum turnover of €750 million, as is the case for the current OECD country by country reporting rules. Unlike the current system of automatic exchange of country by country reports, public country by country reporting would ensure that all governments have access to the information. Furthermore, it would provide citizens, parliamentarians, journalists and civil society organisations with information which is important when assessing the fairness of the corporate tax system. Experiences from the European Union show that public country by country reporting can discourage large-scale corporate tax avoidance by multinational corporations.[9]

Lastly, we believe that the **negotiation of new rules for a minimum effective tax rate** should take place in a forum that allows all countries to participate on a truly equal footing during all stages of the process, serviced by a neutral secretariat. The United Nations is the only truly universal body, and thus we believe that this is the appropriate forum for such a negotiation. While the Inclusive Framework has allowed countries to participate in ongoing discussions, we note that not all countries had an equal say when the mandate for the negotiations was developed. We also find it problematic that participation in the Inclusive Framework is conditioned on countries signing up to the BEPS minimum standards. Lastly, we are concerned by statements by the OECD secretariat suggesting that the commitment to deliver a "*consensus-based solution*" does not entail a commitment to ensuring that all members of the Inclusive Framework agree to the outcome, and that in particular concerns from smaller countries might be disregarded.[10] This, in our view, does not suggest that the members of the Inclusive Framework are participating on an equal footing.

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[1] OECD (2019), *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy*, OECD/G20 Inclusive Framework on BEPS, May 2019, https://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.pdf, page 25.

[2] G20 (2013), *Tax Annex to the St. Petersburg G20 Leaders' Declaration,* September 2013, https://www.mofa.go.jp/files/000013928.pdf

[3] Alex Cobham and Petr Janský (2017), *Global Distribution of Revenue Loss From Tax Avoidance: Re-Estimation And Country Results*, WIDER Working Paper 2017/55 Helsinki: UNU-WIDER, 2017 available from https://www.wider.unu.edu/sites/default/files/wp2017-55.pdf

[4] Rochelle Toplensky (2018), *Multinationals pay lower taxes than a decade ago*, Financial Times, 11 March 2018, https://www.ft.com/content/2b356956-17fc-11e8-9376-4a6390addb44

[5] ICRICT. (2019), *International Corporate Tax Reform: Towards a fair and comprehensive solution*, https://static1.squarespace.com/static/5a0c602bf43b5594845abb81/t/5d979e6dc5f7cb7b66842c49/1570217588721/ICRICT-INTERNATIONAL+CORPORATE+TAX+REFORM.pdf

[6] OECD (2019), *Public consultation document. Global Anti-Base Erosion Proposal ("GloBE") – Pillar Two, 8 November 2019*, https://www.oecd.org/tax/beps/public-consultation-document-global-anti-base-erosion-proposal-pillar-two.pdf.pdf

[7] OECD (2019), *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy*, OECD/G20 Inclusive Framework on BEPS, May 2019, https://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.pdf, page 29.

[8] The threshold for "large corporations" could be set to match the EU definition of a "large undertaking", as defined in Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034&from=EN , Article 3.4. This definition states that: "*Large undertakings shall be undertakings which on their balance sheet dates exceed at least two of the three following criteria: (a) balance sheet total: EUR 20 000 000; (b) net turnover: EUR 40 000 000; (c) average number of employees during the financial year: 250*."

[9] Michael Overesch and Hubertus Wolff (2018), *Financial Transparency to the Rescue: Effects of Country-by-Country Reporting in the EU Banking Sector on Tax Avoidance*, 1 July 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3075784

[10] Julie Martin (2019), *Unanimity not required to update global rules for taxing multinational groups, OECD's Saint-Amans says*, MNE Tax, 18 October 2019, https://mnetax.com/unanimity-not-required-to-update-rules-for-taxing-multinational-groups-oecds-saint-amans-says-36188