SwissBanking

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Public Consultation on the Global Anti-Base Erosion (GloBE) Proposal under Pillar Two

Dear Madam, Dear Sir,

The Swiss Bankers Association (SBA) would like to thank you for the opportunity to provide comments on the GloBE Proposal under Pillar Two. The SBA is the voice of the banks in Switzerland. As an umbrella organisation, we represent almost all banks in Switzerland.

1. Banking-specific considerations on the Pillar Two proposal

SBA supports the comments of the ***International Banking Federation (IBFed)*** regarding banking-specific compliance considerations.

2. Swiss and international businesses' assessment of the Pillar Two proposal

In line with many other business associations worldwide, SBA is concerned about the overall consequences of the OECD proposal on international companies and the global economy.

We therefore endorse the comments of ***economiesuisse and SwissHoldings***, the two main umbrella organizations representing Swiss international businesses, as well as those of the global business association ***Business at OECD (BIAC)***.

3. General comments on the OECD's Pillar Two proposal

In addition to the endorsements above, we take the liberty to elaborate further on some general considerations that are specifically important to SBA members.

a) Aligning the scope of Pillars One and Two, including on carve-outs

In general, SBA is convinced that the scope of Pillar Two should be aligned with the scope of Pillar One. This would include considerations regarding group thresholds and industry carve-outs. We therefore refer to the SBA submission regarding Pillar One and the arguments provided by IBFed on why regulated banks should be carved out from Pillar One.

These arguments should also apply to Pillar Two. A bank's operations are generally tied to the markets where it has obtained a licence and where regulatory capital requirements apply. Hence, banks are generally restricted from engaging in aggressive tax planning by shifting profits to low-tax jurisdictions, the avoidance of which is the underlying principle of Pillar Two.

b) Need for flexibility regarding blending

We think that it is not feasible to rely on a single approach regarding blending. Instead, we suggest a multi-step approach using global blending as a safe harbour.

i. Fist, we are convinced that the same thresholds applied for Pillar One should also apply for Pillar Two (see above). Only companies with a relevant global revenue above this threshold should be in scope.

ii. Second, in-scope multinational groups should assess on a global level whether their consolidated tax rate is below the yet to be defined minimum tax rate. In order to effectively level out fluctuation and outlier years, the reference used should be the average blended group tax rate over five years.

iii. Third, if the overall rate at group level is below the minimum tax rate, companies should be able to apply a more granular approach on how to meet the Pillar Two requirements. Crucially, companies should have the flexibility to rely on segmentations and accounting structures already used within their group.

   Further, the rules should be specified to prevent companies whose average blended group tax rate is below the threshold from being "contaminated" throughout the entire group. For example, the undertaxed payments rule or the subject to tax rule should only apply if the receiving entity is also below the minimum tax rate.

   SBA therefore urges the Inclusive Framework to grant flexibility to accommodate various types of business structures. Finally, further consideration should be given to how the policy goal of Pillar Two can be achieved efficiently. For example, problematic payment streams that are not in line with the OECD's principles addressing harmful tax practices (BEPS Action 5) could be singled out relatively efficiently.

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c) Impact assessment of the Pillar Two proposal in view of the BEPS initiative

SBA emphasizes that international tax competition has been substantially restricted over the last few years, in particular through the BEPS framework. BEPS addresses concerns around base erosion and profit shifting. In addition, transparency has increased significantly in the form of country-by-country reporting (CbCR) requirements and the automatic exchange of corporate tax data. Finally, from an institutional point of view, the “Inclusive Framework on BEPS” is a truly global platform that legitimizes the OECD’s work by considering the interests of a large and diverse group of participating states.

SBA therefore thinks that before any new regime with essentially the same policy goal is initiated, the BEPS project should be completed. Once BEPS is fully rolled out, an evaluation of its effectiveness should be conducted. In line with BIAC, we therefore urge the Inclusive Framework to mandate a thorough impact assessment, in particular with regard to the already implemented BEPS actions, before going ahead with the Pillar Two proposal. Not only business representatives but also academia questions the robustness of the currently available data[1]. For the Inclusive Framework to assess the cost-benefit impact of the OECD initiative, the availability of robust data is crucial.

d) Cost effectiveness and impact on global economy

The various new international tax regimes that emerged over the last few years already created increasing compliance costs and risks for global enterprises. The very broad scope of the Pillar Two proposal would create an additional burden for business. We are concerned that such a broad regime could substantially hurt the global economy, particularly in view of mounting uncertainties regarding trade and international cooperation.

SBA is concerned that a new, far-reaching and overlapping regime on top of existing frameworks could seriously hurt the global economy. If shortcomings regarding certain elements of the existing BEPS regime are identified (see above), particular parts of BEPS should be fine-tuned instead of being addressed with an entirely new regime.

e) Interdependence with Pillar One and rule hierarchy

The degree of complexity stemming from the multitude of new rules envisaged by the OECD and how they should interact is concerning. Critical questions remain unaddressed and the risk of double taxation is imminent.

SBA urges the Inclusive Framework to assess the interdependence between Pillar One and Pillar Two. The underlying assumption of Pillar Two does not factor in the proposed

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[1] A recent example is Jennifer Blouin and Leslie Robinson’s paper: “Double counting accounting: How much profit of multinational enterprises is really in tax havens?” (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3491451)

reallocation of taxing rights under Pillar One, which will have an impact on the amount of taxes a company pays in a given country and most likely also on its overall tax rate. Further, regarding Pillar Two, it remains unclear how the income inclusion rule interacts with other rules such as the undertaxed payment rule as well as existing principles such as CFC rules.

Overall, SBA thinks that Pillar Two should be postponed until the outcome of Pillar One can be assessed. A multitude of overlapping and conflicting rules undermines legal certainty and increases the risk of double taxation, which are two key concerns for taxpayers.

f) Competitiveness and incentives to create a business-friendly environment

Finally, SBA believes in the sovereign right of each country to set its own tax rates. A core principle of the international tax system is that following the allocation of profits based on the agreed international tax framework, taxing rights are at the discretion of the allocated state which has the right to tax at a rate deemed appropriate.

SBA is convinced that a certain degree of tax competition is an effective mechanism to ensure that governments work efficiently and provide conditions that allow businesses to thrive. Small economies like Switzerland have been successful in creating a business-friendly environment by investing in infrastructure, education, research and development.

Granting the taxing right to the jurisdiction where the value creation takes place is a key mechanism to maintain this incentive. If taken away, competitive economies that have successfully invested in value-creating factors would be punished.

We thank you for taking due consideration of our comments.

Yours sincerely,
Swiss Bankers Association

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