

Asia Internet Coalition (AIC) Submission on Addressing the tax challenges arising from the digitalisation of the economy (two-pillar solution), Australia

1 November 2022

To:
Assistant Secretary
International Tax Branch
Corporate and International Taxation Division The Treasury
Langton Crescent, PARKES ACT 2600

Subject: Asia Internet Coalition (AIC) Submission on Addressing the tax challenges arising from the digitalisation of the economy (two-pillar solution), Australia

On behalf of the Asia Internet Coalition (AIC) and its members, I am writing to express our sincere gratitude to the Australian Treasury to submit comments on how Australia can best engage with the [two-pillar solution, including the Pillar Two Model Rules and Commentary](#).

We commend the Australia endorsement to the proposed international corporate tax reforms to address the challenges arising from the digitalisation of the economy. These reforms were developed by the OECD Inclusive Framework on Base Erosion and Profit Shifting and presented as a two-pillar solution that would help ensure that multinationals pay their fair share of tax in the jurisdictions in which they operate.

This public consultation is critical, particularly at a time when cross-border trade and data flows has taken a center stage in the digital economy ecosystem. As responsible stakeholders in the developmental progress, we appreciate the ability to participate in this discussion and the opportunity to provide input into the policy-making process. As such, please find attached to this letter detailed comments and recommendations, which we would like to respectfully request the Australian Treasury to consider and which could be useful feedback for future consultations to determine an optimal approach to implementing the upcoming taxation framework.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact our Secretariat Mr. Sarthak Luthra at Secretariat@aicasia.org or at +65 8739 1490. Furthermore, we would also be happy to offer our inputs and insights on industry best practices, directly through discussions and help shape the dialogue for the advancement of taxation in Australia.

Thank you
Sincerely,

Jeff Paine



Managing Director,
Asia Internet Coalition (AIC)

Detailed Comments and Recommendations

A. Question 9: What challenges do you see with the OECD timelines?

The targeted 2023 timeline for entry into effect of Pillar Two has always been extremely ambitious given the enormity and complexity of the tasks ahead, both at:

- Inclusive Framework level: completion of all of the work streams under the GloBE Implementation Framework (which now does not seem likely to happen by the end of 2022 despite the Inclusive Framework's continued efforts); technical assistance for the implementation and administration of the GloBE rules; development of a model treaty provision for the STTR and a process to assist countries in implementing the STTR;
- At country level: challenges in implementing the GloBE rules (political, constitutional, timing, ...); in deciding on whether and/or how to implement Pillar Two, countries may wish to revisit their tax policies, including tax incentives, in light of GloBE implementation (as suggested by the OECD's 6 October 2022 Report, Tax Incentives and the Global Minimum Corporate Tax: Reconsidering Tax Incentives after the GloBE Rules) – this will take time; tax administration capacity challenges; and,
- At taxpayer level: the unprecedented complexity and novelty of the systems/ processes that will need to be put in place to ensure GloBE compliance will require significant time and resources. The more precise requirements under the GloBE Model Rules will not be clear until all relevant work streams under the GloBE Implementation Framework (such as the work on the administrative guidance, safe harbours and GloBE Information Return) are completed. There may then be local variations in terms of implementation and administration that will need to be accounted for. Taxpayers will need to have sufficient time to develop, test and implement the necessary systems/system changes/processes. The co-ordinated introduction of the Pillar Two rules by countries is important to ensure that the compliance burden is not increased even further in the initial period/periods.

Given all of the above, we believe it would be sensible to delay the targeted effective date to 2024 for the IIR and STTR and 2025 for the UTPR, with a meaningful soft-landing period (say, for the first 3 years at least) during which no penalties and no late payment interest would be applied in the case of incorrect GloBE disclosures made in good faith. A deferral would also allow for further meaningful consultation of business on the various work streams under the GloBE Implementation Framework and the STTR, as the OECD set out to do. We continue to support the Inclusive Framework's stated priorities and efforts in developing a GloBE Implementation Framework that is efficient both for taxpayers and tax administrations and preserves consistent and coordinated outcomes for MNEs that avoid the risk of double taxation while minimizing compliance costs.

B. Question 10: What design features would you like to see within the existing Pillar One and Two frameworks? For example, are there any approaches to implementation which may mitigate implementation challenges?

- For Pillar Two, there should be a safe harbour (as discussed within the OECD) whereby if a country has an effective tax rate above 15% on its transfer pricing country-by-country filings, then it should not need to calculate an effective tax rate under the OECD Pillar Two rules. A ‘white list’ of countries, with statutory corporation tax rates above a certain percentage, 20% might be a good rule of thumb, would again be a practical safe harbour.
- **Article 4.1.5 of the OECD’s GloBE Model Rules:** we understand that concerns raised by business around Article 4.1.5 potentially leading to top-up taxation in a period in which the MNE made a loss in a jurisdiction are being considered and that potential options that could address issues relating to the timing of the charge and the ability to access the substance based income exclusion are being explored by the Inclusive Framework. Thee AIC welcome this.
- **Article 9.1.3 of the OECD’s GloBE Model Rules:** Article 9.1.3 prevents a step-up in the carrying value of an asset when it is transferred intra-group in the transition period, regardless of whether tax is paid on the intra-group asset transfer. We understand that consideration is being given by the Inclusive Framework to disapplying this restriction in cases in which assets are transferred and tax is paid on the gain arising on the transfer. This would be a welcome clarification.
- The consultation document (p. 16) notes that "the OECD is considering the merits of a potential **multilateral convention** to ensure the coordination and consistent implementation of the GloBE Model Rules". We support a multilateral convention for Pillar Two. The October 2020 Pillar Two Blueprint itself acknowledges that "a multilateral convention would be the only means to enshrine rule co-ordination in a legally binding form" and "ensure consistency, certainty and co-ordination in the application and operation" of the GloBE rules (Blueprint, para 705). Without this, there is a significant prospect of double taxation and unnecessary disputes. A multilateral convention could also contain a mechanism for multilateral dispute resolution (Blueprint, para 708). (Even if a multilateral convention is not possible at this time, the Implementation Framework should develop a robust dispute resolution framework in which there is a process that produces a result that is accepted by all Inclusive Framework jurisdictions. This will ensure a coherent application of the Model Rules worldwide and potentially facilitate audits and settle disputes between companies and tax authorities or between tax authorities.) Finally, there is significant discussion and doubt around the compatibility of the GloBE rules (and in particular the UTPR) with existing double tax treaties. A multilateral convention could (and may in fact be needed to) address these concerns and uncertainty as well as solve primacy issues in many countries regarding treaty overrides.

C. Question 12. Are there any other comments or issues you wish to raise in relation to the Pillar One and Two rules that should be considered by Australia in the design and implementation stage?

Australia should implement the Pillar Two rules as closely as possible to the OECD's Pillar Two Model rules, to ensure consistency with other OECD countries, which will minimize the calculation and compliance work of multinational jurisdictions.

D. Question 29: Do you have any comments on possible scope, design, and conditions of access to a safe harbour?

Broad, simple and administrable safe harbours are critical to the administrability of the GloBE rules and to MNEs' ability to manage the significant complexity and additional compliance imposed by the rules. We understand that the Inclusive Framework is making progress on the development of safe harbours following the public consultation earlier this year and look forward to further consultation on this. For safe harbours to make a meaningful difference to MNEs' implementation efforts, they need to be decided as early as possible.

We believe the following safe harbours (which could be used in combination, at the option of MNEs) would be particularly helpful:

- A "tax administrative guidance" safe harbour which is designed to identify countries in which it is not considered likely that material undertaxed profits will arise and therefore detailed Pillar Two calculations would not be required;
- A safe harbour (with no requirement to file detailed calculations as part of the GloBE Information Return) in cases where no top-up tax would be due, for instance, in respect of a jurisdiction where MNE Groups are subject to a QDMTT (as mentioned in the Commentary to the GloBE Model Rules) or where the MNE is in an overall GloBE loss position; and,
- Some form of CbCR safe harbour - many possible variations have been proposed by business and we look forward to providing further input when the preferred direction of travel within the Inclusive Framework is clear.

For safe harbours to be truly effective, we believe it is important that clear boundaries be set to tax authorities' ability (discretion) to challenge safe harbour elections and the timeframe within which they can do so. The absence of such clear boundaries could undermine the benefit of simplification and the stated goal of tax certainty. Clarity should be provided with respect to the circumstances under which safe harbours can be challenged under Article 8.2.2 of the GloBE Model Rules. We would also suggest shortening the timeframe for challenging the safe harbour to two years from the time that the GloBE return was filed.
