



Bombay Chartered Accountants' Society
Harnessing Talent and Providing Quality Service

7, Jolly Bhavan 2, Ground Floor, New Marine Lines, Mumbai - 400 020 • Tel. : + 91 22 6137 7600
Website : www.bcasonline.org • E-mail : bca@bcasonline.org



President
Manish Sampat
president@bcasonline.org

Vice President
Suhas Paranjpe
vp@bcasonline.org

Hon. Jt. Secretaries
Mihir Sheth
js@bcasonline.org
Samir Kapadia
js1@bcasonline.org

Hon. Treasurer
Abhay Mehta
treasurer@bcasonline.org

2nd December 2019

To,

The International Co-operation and Tax Administration Division

Centre for Tax policy and Administration

OECD.

Dear Sir,

Ref.: Comments and Suggestion for Pillar 2-Global Anti-Base Erosion (“GloBE”) Proposal

This is with reference to captioned Proposal inviting suggestions regarding public comments on policy technical and administrative issues for specific questions.

At the outset, the International Taxation Committee of the Bombay Chartered Accountants Society congratulates OECD division for considering tax challenges arising in the Economy, thereby setting an example that the law evolves with dynamic business models and consists of a set of rules that match the need of the hour

As explained in the document Pillar1 addresses the allocation of taxing rights between jurisdictions and describes proposals for new profit allocation and nexus rules. As against the same Pillar 2 (also referred to as the “GloBE” proposal) proposes to develop set of rules to address the risks from structures that allow MNEs to shift profit to jurisdictions where they are subject to no or very low taxation. The Pillar seeks to address remaining BEPS challenges by ensuring that the profits of internationally operating businesses are subject to a minimum rate of tax.

Pillar 2 - Global Anti-Base Erosion Proposal (“GloBE”)
Comments and observations by BCAS.

Thus, having allocated the rights to a particular jurisdiction, this would in a way affect the sovereign right of that jurisdiction to set its own tax rates. Hence, it is proposed to implement the same by way of changes to domestic law and double tax treaties.

The GloBE proposal is based on the premise that, in the absence of a coordinated and multilateral solution, there is a risk of uncoordinated, unilateral action, both to attract more tax base and to protect existing tax base, with adverse consequences for all jurisdictions.

The proposal is intended to be implemented by four different rules i.e. income inclusion, undertaxed payment, switchover, subject to tax. These rules are likely to be inter-connected and it is also proposed to have overall coordinating rule.

The design options, the nature and scope of subject to tax rule, the mechanics and operation of the undertaxed payment rule need to be further developed.

Under this document we have made an attempt to reply to some of the specific questions raised for consultation.

2 Tax base determination

Question 1 in Section 2

a) Do you agree 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 and reduce the compliance costs of the GloBE proposal?

Response: Yes, with detailed reporting on related party payments.

b) What would be the consequences of using the accounting standards applicable to the ultimate parent entity of the MNE? Would you suggest a different approach?

Response: Opportunities should not arise for MNEs to implement structures where ultimate parent entity is based in a jurisdiction which provides advantage under GloBE proposal through use of accounting policies.

Pillar 2 - Global Anti-Base Erosion Proposal (“GloBE”)
Comments and observations by BCAS.

- c) How would you recommend determining whether a financial accounting standard is an appropriate standard for determining the tax base under the GloBE proposal?**

Response: IFRS or local GAAP harmonized with IFRS may be considered with suitable consideration for fair value adjustments - for instance, notional interest income considered in financial income on account of interest-free security deposit being classified as a financial asset.

- d) Do you have concerns that allowing more than one financial accounting standard to serve as the starting point for determining the tax base under the GloBE proposal will place some MNEs at a competitive advantage due to variations in financial accounting standards among jurisdictions?**

Response: Yes, we agree. Permitting more than one type of accounting standards should not create opportunities for MNEs to implement structures using countries with favourable accounting standards. In other words, in addition to tax treaty shopping, accounting standard shopping situations could arise.

- e) There may be some instances where MNEs, particularly smaller MNEs, do not prepare consolidated financial statements for any purpose. How much of an issue do you think this is and for what types of MNEs? Where this is the case, how would you suggest the issue should be addressed?**

Response: Such smaller MNEs should be carved-out by providing a reasonable threshold for application of GloBE.

- f) Are there additional or different considerations that apply to the tax base determination for purposes of an undertaxed payments rule?**

Response: In view of challenges of income inclusion rules and potential compliance burden with tax payers, undertaxed rule may be a better option. Ideally, a proper mix of both can be used; Undertaxed payment rule for small MNEs (within a threshold) and Income Inclusion for large MNEs. CbCR threshold can be used for this purpose.

-----*This Space Is Intentionally Left Blank*-----

Pillar 2 - Global Anti-Base Erosion Proposal ("GloBE")
Comments and observations by BCAS.

Question 2 in Section 2

a) What are the material permanent differences between financial accounting income and taxable income that are common across jurisdictions and that you think should be removed from the tax base without undermining the policy intent of the GloBE proposal?

Response: 1. Incomes under financial statements not considered taxable income (subvention payments, exchange gain on capital loans, etc.)

2. Incomes from specific activities to which tax holidays are provided.

3. Capital expenditure not amortized in books but provided deduction / weighted deduction from taxable income;

4. Compulsory CSR expenditure not allowed as tax deductible expenditure.

b) Do you have views on the methods that could be used for dealing with permanent differences?

Response: Only permanent differences which result in BEPS should be tackled under GloBE proposal. The same should not impact sovereign right of the country to determine its own tax structure which is otherwise compliant with BEPS Action 5.

c) Do you have any comments on the practicality of making adjustments for permanent differences?

Response: If only countries having harmful tax regimes under BEPS Action 5 are covered under GloBE proposal, the permanent differences in those jurisdictions should be analysed in greater detail.

d) Do you think any other adjustments to the financial accounts require attention?

Response: No.

Pillar 2 - Global Anti-Base Erosion Proposal (“GloBE”)
Comments and observations by BCAS.

Question 3 in Section 2

- a) Do you have any comments on the use of carry-forward of losses and excess tax as a mechanism for addressing temporary differences under the GloBE proposal?**

Response: The mechanism is expected to be a cumbersome process on account of memorandum accounts; effective designing to tackle only temporary differences; special rule on change of ownership of subsidiary, and will become complicated once implemented.

- b) Do you have any comments on the use of deferred tax accounting as a mechanism for addressing temporary differences under the GloBE proposal?**

Response: This mechanism is expected to be simpler and cost efficient.

- c) Do you have any comments on the use of a multi-year approach to measure the average effective tax rate as a mechanism for addressing temporary differences under the GloBE proposal?**

Response: This mechanism appears simple but is slightly arbitrary since the same requires deciding on a number of years across which average is to be computed. This can result in GloBE impact being postponed or preponed.

. Accordingly, this mechanism may not be preferred over other mechanisms.

- d) Do you have any comments on what limitations (if any) should be imposed on the normal financial accounting rules for deferred tax assets and liabilities and the practicalities of imposing those limitations?**

Response: The deferred tax mechanism should require disclosure / bifurcation between permanent differences and temporary differences. Only differences resulting in BEPS should be considered under GloBE proposal.

- e) Do you see opportunities for potential abuse in any of the approaches for addressing temporary differences described above? Do you have suggestions for designs to prevent those abuses?**

**Pillar 2 - Global Anti-Base Erosion Proposal (“GloBE”)
Comments and observations by BCAS.**

Response: Over other mechanisms, the deferred tax accounting mechanism may be subject to less abuse.

f) Do you have any suggestions for alternative mechanisms for dealing with temporary differences?

Response: No.

g) Do you have any additional comments on Section 2, including comments based on experiences with existing regimes that you suggest should be adopted or avoided?

Response: No.

3. BLENDING APPROACH

Q4 How would you assess the general compliance costs and economic effects of a GloBE proposal that is based on either an entity, jurisdictional or worldwide blending approach?

Response: Yes; based on the approach, MNEs need to consolidate its financial statement which might not be the requisition otherwise under local laws and then off-course reconciliation of Profit as per GloBE GAP's and Local GAP's with adjustments. It will also increase international litigation in case of flaw in tax administration as also substantial compliance cost.

Q5 In the absence of any of the approaches for addressing temporary differences discussed in Section 2, do you consider that a worldwide approach would be effective at managing the volatility issues discussed above?

Response: Yes, worldwide approach will provide more opportunities to offset temporary difference arising at different level in the same period.

Q6 Assuming that the MNE's income for purposes of the GloBE proposal would be determined by reference to financial statements (adjusted as necessary) and assuming further that an MNE already prepares consolidated financial accounts, what are likely to be the compliance implications for MNEs

Pillar 2 - Global Anti-Base Erosion Proposal (“GloBE”)
Comments and observations by BCAS.

in (i) separating the income and taxes of their domestic and foreign operations under a worldwide blending approach, (ii) separating the income and taxes to a jurisdictional level, or (iii) breaking down income and taxes to an entity level?

Response: Please refer to Response to Q4.

Q7 (a) How would you suggest to apportion the income of an entity between the branch and the head office and do you think it should follow what is done for tax purposes?

Response: A separate entity approach can be followed to allocate income between HO and Branch. As we understand for tax purposes branch income is blended with HO which cannot be followed when both Branch and HO are in different jurisdiction. For example HO being at domestic location and Branch at foreign location, if income is blended with HO as we do for tax purposes, it will result into higher tax in domestic location which is unfair and therefore following separate entity approach for GloBE proposal is suggested.

Q7 (b).What are the compliance implications of such an allocation under a worldwide, jurisdictional and entity blending approach?

Response: Please refer to Response in Q4.

Q8. How would you suggest to apportion the income of a transparent entity and do you think it should follow what is done for tax purposes?

Response: Yes. In case of a transparent entity viz. partnership firm for tax purpose income is determine in the hands of Partners. Question will arise under GloBE Proposal when Firm and Partners are in different jurisdictions. Therefore, while blending income and tax for GloBE Proposal Income and tax determine for tax purpose can be followed.

Pillar 2 - Global Anti-Base Erosion Proposal (“GloBE”)
Comments and observations by BCAS.

4. CARVE-OUTS

Response:

The possible carve-outs as well as thresholds and exclusions would restrict the application of the GloBE proposal. It would undermine the policy intent and effectiveness of the proposal. It also need to take into account their interactions with other existing international obligations of various countries. The merits and demerits of qualitative and objective carve outs have already been discussed in the document.

It is better that carve outs, threshold and exemptions should be considered after the design options, mechanism and contours of all the rules are broadly available.

We Trust above comments will be helpful while finalising the rules to be issued.

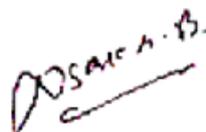
Yours Faithfully,

For Bombay Chartered Accountants’ Society



Manish Sampat

President – BCAS



Mayur Nayak

Chairman – International Tax Committee–
BCAS