

03.02.2023

COMMENTS ON TAX CERTAINTY ASPECTS OF GLOBAL MINIMUM TAX IN RESPONSE TO THE OECD PUBLIC CONSULTATION

Comments by Fortum Oyj (EU Transparency register ID 03501997362-71)

Dear Sir or Madam,

Fortum is an energy company driving the change for a cleaner world. Our strategy is to phase out CO₂ emitting power production within the terms of the Paris Climate Convention. Meeting this climate target means material changes in our operative fleet and in our operations – our future investments will be measured in billions.

Fortum has committed to B Team's responsible tax management principles, we promote public country-by-country reporting of total tax contribution, and we have reported our tax footprint publicly since 2012¹. Predictability, simplicity and clarity of regulations, including tax regulations, are key underlying factors for the success of our transition and the future. Low predictability and the risks of economic double taxation, together with increasing interest rates and stressed markets, are a serious challenge. Future energy sources and long-term investments in new power production are being decided now and in the near future.

We welcome OECD actions taken to achieve tax certainty in relation to the Pillar Two rules. In our earlier communication to the OECD, we emphasised the need to ensure uniformity and predictability in the application of the GloBE rules between jurisdictions as one of the critical factors of successful implementation of the regulation. New regulations must adequately recognise and support the challenges of implementing the established climate ambitions towards carbon neutrality by bringing tax assurance and certainty, which must be supported by dispute prevention and resolutions mechanisms.

Executive summary

Early engagement defining the tax treatment based on the GloBE rules should be the priority, together with **governance rules for tax authorities**. This will reduce disputes and gain trust between MNEs and tax authorities. The possibility to receive advanced binding rulings without exposure to the lengthy processes and without accessing the dispute resolution mechanisms are fundamental. Only **binding instrument(s)** can be effective with regard to tax certainty, predictability, simplicity and clarity. Absent binding dispute prevention and resolution mechanisms, the GloBE rules create the risk of higher investment cost and lower predictability of the tax consequences of long-term investments. This risk is significant and could result in lack of trust, conflict escalation, and double or over-taxation in many countries.

Dispute prevention and resolution mechanisms in relation to the GloBE rules should be reached with jurisdictional commitment, whereby states resolve and agree on the assessment, **prior to the collection of any taxes, penalties and interest**.

¹ <https://www.fortum.com/files/fortum-tax-footprint-2021/download>

03.02.2023

Comments in relation to the Public Consultation Document

a) Have you identified possible scenarios where two (or more) jurisdictions implementing the GloBE Rules could interpret or apply the rules in a different manner, despite the Model GloBE Rules, Commentary, future agreed Administrative Guidance and the multilateral review process (qualified rule status)? If yes, could you describe such scenarios?

The majority of the countries we operate in are still in the process of analysing the application of the GloBE rules. Even though we have experience in IFRS accounting, tax accounting and tax compliance, the new rules create a lot of complexities that are difficult to foresee how they may be understood and assessed in different countries. Our experience from transfer pricing rules proves that different countries have different interests and approaches to topics, in spite of the OECD Commentary and guidance. We consider the risk of mismatches in interpretation to be high and we find it difficult to foresee the actual mismatches at this stage.

b) Double taxation could arise when two implementing jurisdictions impose Top-up Tax with respect to the same item of GloBE Income because of different interpretations or applications of the GloBE Rules. Have you identified any instances where different interpretations or applications of the GloBE Rules should be addressed by a dispute resolution mechanism, even if the MNE Group has not suffered double taxation?

Interest deduction limitation

Interest deduction limitation rules, depending on the profitability, already exist in many jurisdictions. Additionally, the minimum tax proposal with respect to group internal financing could undermine new businesses with genuine substance by increasing their tax burden in the form of a top-up tax. Qualification of the low/high tax jurisdiction should be ignored for certain types of investments, especially in a capital-intensive industry. *Deductibility of arm's length payments for services and goods is essential to avoid excessive double taxation.*

Transition rules and tax attributes upon transition

The OECD commentary sets out detailed interpretation guidelines including the transition rules. We find it important that jurisdictions apply the GloBE rules in a consistent manner, also in relation to recognition of the opening balances for the GloBE purposes, specifically, to the items that might be material due to industry sensitivities. One such item is the tax attributes of a constituent entity that may be utilised in calculating the ETR in a jurisdiction in the transition year and in subsequent years, including losses that have not been recognised due to an accounting recognition adjustment or valuation allowance. *The opening balances of a deferred tax asset/deferred tax liability recognised and unrecognised should be taken into account in the calculation of the GloBE ETR to avoid double taxation.*

03.02.2023

c) Have you identified any other options that could be explored to achieve tax certainty for the GloBE Rules?

We recommend that the OECD creates a governance framework for the GloBE rules, a framework that establishes guiding principles and a commitment of tax authorities in terms of procedures and the decision-making process. It would be a step towards a tax system committing businesses and tax authorities to responsible behaviour. *Being transparent about how the assessments are done, what items are taken into account, and how different court decisions are respected would increase tax certainty.*

Introduction of the Safe Harbours and Penalty Relief rules based on the country-by-country reporting ETR would exclude businesses with sufficient substance and tax contribution. That will provide significant simplification and increase predictability, which are the fundamentals of a good tax system. We encourage the OECD to introduce these rules and not limiting them to the transitional period only, as this significantly reduces the compliance burden. Application of permanent Safe Harbour rules based on the simplified GloBE calculation requires further development, as stated by the OECD, throughout the introduction of Agreed Administrative Guidance. *Late introduction will cause tax uncertainty and potential differences in the application on the domestic level.*

The OECD commentary proposes collaboration through the Inclusive Framework to clarify specific issues that may arise in the interpretation of the GloBE rules between jurisdictions. It is positive, but it is not efficient enough. We recommend that the OECD creates, on top of the Inclusive Framework route, a board that could give strong recommendations in case of unclear interpretation. *Both MNEs and tax authorities should have the possibility to ask for recommendations. This mechanism should be embedded in the standard process of the Inclusive Framework.*

A co-ordinated programme similar to the OECD International Compliance Assurance Programme (ICAP) could be a good option to consider for the GloBE purposes. At the same time, the ICAP staffing requirements may be quite considerable and the processes time consuming, so we are concerned whether it is practicable. Advance Pricing Arrangements (APA), especially bilateral and multilateral, involve both the taxpayer and the affected tax administrations and provide comprehensive tax certainty with respect to transfer pricing issues in a collaborative and transparent manner. *We agree with the OECD that not all MNE groups within the scope of the GloBE rules may be able to access such APA-like mechanisms or that it may take years to reach such an agreement.*

Reijo Salo VP, Head of Tax reijo.k.salo@fortum.com

Anna Wrzesińska Senior Tax Manager anna.wrzesinska@fortum.com