EPRA
EUROPEAN PUBLIC
REAL ESTATE ASSOCIATION

OECD – Organisation for Economic Co-operation and Development

International Cooperation and Tax Administration Division
Centre for Tax Policy and Administration
2, rue André Pascal
75775 Paris Cedex 16
France

Submitted by e-mail to: taxpublicconsultation@oecd.org

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SUBJECT:

OECD Global Anti-Base Erosion Proposal ('GloBE') – Pillar Two Public Consultation

Dear OECD Tax Consultation team,

For 20 years, the European Public Real Estate Association (EPRA) has been the voice of Europe's listed real estate companies that derive income from the ownership, trading and development of income producing real estate assets. Listed real estate allows anyone, from retail investors to large institutional investors, to invest in the underlying assets of public quoted companies, the same way as investing in other industries through purchasing shares. With more than 275 members[1] (companies, investors and their suppliers), EPRA represents over 450 billion EUR of real estate assets (European companies only) and 94% of the market capitalisation of the FTSE EPRA Nareit Europe Index.

In May 2019 the Inclusive Framework agreed a Programme of Work for Addressing the Tax Challenges of the Digitalisation of the Economy. The Programme of Work is divided into two pillars:

Pillar One addresses the allocation of taxing rights between jurisdictions and considers various proposals for new profit allocation and nexus rules;

Pillar Two (also referred to as the "Global Anti-Base Erosion" or "GloBE" proposal) calls for the development of a co-ordinated set of rules to address ongoing risks from structures that allow MNEs to shift profit to jurisdictions where they are subject to no or very low taxation.

The OECD secretariat released a public consultation document on the unified approach under Pillar One on 9 October 2019.

Subsequently, the Consultation at hand, to which EPRA is hereby responding, seeks comments on the Pillar Two proposals, including views on carve-outs and thresholds that may be considered as part of the GloBE proposals.

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[1] The full list of EPRA members is available at https://www.epra.com/about-us/who-we-are/our-members.

The OECD GloBE proposal under Pillar Two represents a substantial change to the international tax architecture. This Pillar seeks to comprehensively address remaining BEPS challenges by ensuring that the profits of internationally operating businesses are subject to a minimum rate of tax. A minimum tax rate on all income reduces the incentive for taxpayers to engage in profit shifting and establishes a floor for tax competition among jurisdictions. In doing so, the GloBE proposal is intended to address the remaining BEPS challenges linked to the digitalisation of the economy, but it goes even further and addresses these challenges more broadly.

The GloBE proposal posits that global action is needed to stop a harmful race to the bottom on **corporate taxes**, which risks shifting the burden of taxes onto less mobile bases and may pose a particular risk for developing countries with small economies.

Given the expected impact on the behaviour of taxpayers and jurisdictions, EPRA would like to present comments on the Programme of Work on Pillar Two, and in particular, the sector's views on a carve-out of the listed real estate investment trusts which should be part of the GloBE proposal. Hence, we would like to provide you with the industry's answers to the following two questions:

1. **Would you favour a carve-out for specific sectors or industries? If so, please state the sector or industry, explain your reasons and share thoughts on how such a carve-out could be operated with as little compliance cost and uncertainty as possible.**

2. **Do you have any additional comments on carve-outs, including comments based on experiences with existing regimes that you suggest should be adopted or avoided?**

CALL FOR A 'LISTED REAL ESTATE INVESTMENT TRUSTS' (REITs) CARVE-OUT

QUESTION NUMBER ONE:

'Would you favour a carve-out for specific sectors or industries? If so, please state the sector or industry, explain your reasons and share thoughts on how such a carve-out could be operated with as little compliance cost and uncertainty as possible.'

We at EPRA agree with the OECD's views on the need of a coordinated and multilateral solution to tax challenges. We are open for a possibility to have a well-designed set of rules implemented in domestic law and tax treaties, which would enable a coordination between the states (i.e. tax authorities) where more than one jurisdiction seek to apply common rules to the same structure or arrangement in order to avoid the risk of double taxation that might otherwise arise.

However, we also need to stress that the uniqueness of the real estate investment trusts (REITs) and the variety of tax treatment in jurisdictions globally may require a more tailored solution. In fact, the importance and the globalisation of investments in and through REITs already led the OECD to examine the specific cross-border tax issues that REIT investments raise for tax treaties. In 2008, there was the 'Tax Treaty Issues Related to REITs' report adopted by OECD Committee on Fiscal Affairs.

To briefly explain the core of the issues, '*a REIT is a widely held company, trust or contractual or fiduciary arrangement that derives its income primarily from long-term investment in immovable property (real estate), distributes most of that income annually and does not pay income tax on income related to immovable property that is so distributed. The fact the REIT vehicle does not pay tax on that income is the result of tax rules that provide for a single level of taxation in the hands of the investors*

in the REIT (with corresponding withholding tax obligations imposed on the REIT with respect to its distributions to foreign investors).' [2]

Despite these common features, there may be significant differences between countries as regards how REITs are structured and how the tax exemption of the income is provided. In some countries, REITs were developed using the tax rules generally applicable to trusts and companies; in others, a specific REIT tax regime has been adopted. The specific tax mechanisms that ensure REITs are tax exempt also vary from country to country and can include, for example, rules that allow the deduction of REIT dividends or distributions; tax exemption of only the part of the REIT's income distributed within a specific period; tax exemption of a REIT that meets certain conditions or rules that allocate income to investors rather than to the REIT itself.[3]

This 'tax-transparent status' (an effective tax pass-through) means that REITs remove double taxation that otherwise applies to property investment via corporate vehicles – i.e. taxation of profits at company and shareholder levels. REITs profits will therefore be taxed at the shareholders' level.

Given that the GloBE proposal is presenting a global action to stop a harmful race to the bottom on corporate taxes, which risks shifting the burden of taxes onto less mobile bases, we would like to stress that the action would not be particularly suitable to address the global tax challenges of cross-border investments done by REITs.

We are therefore calling for the sector's carve-out on the premise that such specialised vehicles would require a more tailored solution. We could start by resolving the outstanding difficulties of the European Union to apply the OECD's REITs related suggestions within the Union (next chapter).

CALL TO EXAMINE A POSSIBLE SOLUTION FOR REITS IN THE EUROPEAN UNION

QUESTION NUMBER TWO:

EPRA answer to the question: 'Do you have any additional comments on carve-outs, including comments based on experiences with existing regimes that you suggest should be adopted or avoided?

OECD itself acknowledges, that some of the issues and suggestions discussed in the Model Tax Convention on Income and on Capital which was published in 2017 (and is based on the Tax Treaty Issues Related to REITs adopted by OECD Committee in Fiscal Affairs on 20 June 2008) may raise particular issues for countries that are member of the European Union. The OECD at the time did not have a mandate to look into the EU related specificities. Besides, it was said to be subject of the on-going work by the European Commission and Member States of the European Union.

However, it was proven tremendously challenging to find an appropriate solution by both the EU and the Member States and keep the discussions going.

In the meantime, the European listed REITs sector has grown with fourteen Member States which have recognised a public benefit to incentivise real estate investment through the capital market and have introduced Real Estate Investment Trusts legislation (i.e. REIT regimes)[4] to maximise returns

[2] The OECD's definition of a REIT used for the purpose of the OECD Model Tax Convention.

[3] More information is available in the: EPRA Global REITs Survey 2019

[4] EPRA EU REITs Leaflet 2018: Belgium, Bulgaria, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Netherlands, Portugal (added in 2019), Spain and the United Kingdom.

through an effective pass-through for tax purposes. These 14 EU Member States now represent 81% of the European Union, in which there is a listed real estate market, with the EUR 302.08bn value of their assets[5]. These numbers will continue to grow as more countries will recognise a public benefit of having a 'tax transparent status' of listed real estate, for example draft REIT legislation is being considered in Poland.

We would welcome a constructive dialogue with you on this subject and remain available to discuss this further at your convenience at publicaffairs@epra.com.

Kind regards,

Tobias Steinmann
EPRA Director of Public Affairs
M +32 (0)476 974659
T +32 (0)2739 1021
t.steinmann@epra.com

[5] As at December 2018. More information is available here.