

OECD – Organisation for Economic Co-operation and Development

International Cooperation and Tax Administration Division

Centre for Tax Policy and Administration

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

Brussels, 14 December 2020

SUBJECT:

Comments on the OECD Global Anti-Base Erosion ('GloBE') Report on the Pillar Two Blueprint

Dear Ladies and Gentlemen,

The European Public Real Estate Association (EPRA) is the voice of Europe's listed real estate companies that derive income from the ownership, management 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 publicly quoted companies, the same way as investing in other industries through purchasing shares. With more than 270 members¹ (companies, investors and their suppliers), EPRA represents over 670 billion EUR of real estate assets (European companies only) and 94% of the market capitalisation of the FTSE EPRA Nareit Europe Index.

On behalf of the European listed real estate sector, we would like to submit this letter in response to the Public Consultation Document on the Report on the Pillar Two Blueprint which was released by the OECD on 12 October 2020.

As indicated in the first letter to the OECD in response to the previous Public Consultation, dated on 2 December 2019, **it is EPRA's view that the uniqueness of real estate investment trusts (REITs) may require a tailored solution.**² We believe that this view is consistent with the OECD's approach vis-à-vis REITs, as their importance and the globalisation of investments have already led the OECD to specifically examine the cross-border tax issues that such investments in and through REITs raise for tax treaties.³

In this letter, we wish to remind the OECD of the historical recognition of REITs and call for its reinforcement in the OECD GloBE Pillar Two Blueprint.

Besides, we would like to highlight our agreement with the OECD 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. We appreciate that this is an important responsibility which we share together. With that vision, we want to provide you with the industry's input on how to address best the cross-border tax questions regarding REITs that pose no threat to the tax objectives which are sought to be addressed by the OECD Global Anti-Base Erosion rules.

¹ <https://www.epra.com/about-us/who-we-are/our-members>

² [EPRA response to the OECD consultation Dec 2019 final 1576068996595.pdf](#)

³ Referring to the Tax Treaty Issues Related to REITs adopted by the OECD Committee on Fiscal Affairs on 20 June 2008

With that in mind, we will be providing comments on the following two questions:

Chapter 2: Scope of the GloBE rules

- a. **The treatment of investment funds** (as defined in Section 2.3.) **under the GloBE rules.** [Para 76-83 of the Blueprint]
1. Considering that the GloBE rules only protect the tax neutrality of investment funds that are at the top of an MNE Group's ownership chain, are there specific situations in which the GloBE rules do not adequately protect the tax neutrality of investment funds?

Chapter 3: Calculating the ETR under the GloBE rules

- d. **The treatment of tax transparent entities.** [Refers to paragraphs 274-278 and 283 of the Blueprint]
1. Are there further technical issues to consider in regard to the treatment of fully or partially tax transparent and (reverse) hybrid entities?

Please note that we will address both questions at the same time as they are closely interconnected and should be addressed while preserving their connection.

EPRA COMMENTS ON THE QUESTIONS

We are pleased with the OECD recognition that certain vehicles or entities ought to be – for good reasons – specifically excluded, such as investment and pension funds. This exclusion is in the proposed GloBE Pillar Two rules extended to vehicles which would typically benefit from an exclusion or an exemption from tax under the laws of the jurisdiction where they are incorporated.

We agree that the entities excluded from the scope of the GloBE Pillar Two rules all have a particular purpose and status under the laws of the jurisdiction in which they are created or established. As you rightly stressed in the Blueprint from page 32, this status is likely to result in that entity not being exposed to domestic income tax in order to preserve a specific intended policy outcome under the laws of that jurisdiction. The domestic tax outcome may, for example, be designed to ensure a single layer of taxation on vehicles used by investor, which is equally true not only for investment funds but also for REITs in Europe.

We appreciate the OECD's understanding that the tax policy objectives of the domestic tax exemption for these types of entities neither are inconsistent with the tax policy objectives of the GloBE rules nor create a competitive distortion that would undermine the tax policy objectives of the GloBE Pillar Two proposal. Subjecting the income of such entities to tax under the GloBE rules would fully undermine the policy objectives that the domestic jurisdiction is seeking to achieve by granting the exemption without furthering the tax policy objectives of the GloBE rules.

Building on what has already been recognised by the OECD and reiterated in the above paragraphs, we want to remind the OECD that **listed REITs in Europe⁴ are in vast majority of cases operational investment companies and would rightly so not qualify as investment funds.** There are many reasons why REITs operate outside the AIFMD framework and by doing so complement nicely the wide universe

⁴See also [EPRA REITs Leaflet final 2018 version](#)

of real estate investments. Being incorporated as a listed company, REIT can adopt a longer-term vision on how best to invest in real estate, or in other words how best to operate in the community in which it serves businesses and the society by actively developing, managing, maintaining and improving the built environment. It is not by coincidence that we – the listed real estate companies and REITs – are the guardians of many of the highest quality assets in Europe’s cities, from office complexes and shopping centres to healthcare and retirement facilities.

Therefore, while the same policy rationale lies behind the exclusion of investment entities and REITs, it is not possible to apply the investment fund’s exclusion on REITs where they are listed property investment companies.

As a consequence, we are moving on to review the OECD proposed rules given to tax neutrality regimes in 2.3.6 of the Blueprint, and the statement in chapter 98 indicating that special rules are required to address these regimes.

Generally, we welcome that special attention has been paid by the OECD to tax neutrality regimes. We agree that the same policy rationale which applies to the directly excluded entities, such as investment and pension funds, shall apply to other entities which are subject to specific tax policy objectives of the domestic tax exemption rules. We agree that they should not be undermined by the GloBE Pillar Two rules.

We support such recognition of the OECD which is only further reinforced in the context of the current Covid-19 crises and the efforts of national governments to apply the existing tools which assist in redirecting the investments where they are needed and where they benefit to not only investors but also to society at large.⁵ We would like to add, that REITs do not pose a threat to the GloBE’s objectives. Our recent study on the ‘Total Tax Contribution of Listed REITs in Europe’⁶ attests to that fact.

The way the REIT concept has developed in Europe over the years has meant that national structures take into account the differing real estate markets, capital markets, saving markets and stock markets within the EU Member States and the United Kingdom. These differences have led to differing adaptations of the basic REIT principle and therefore domestic REIT regimes in Europe vary in some respect from jurisdiction to jurisdiction⁷. They could partially meet criteria set for tax transparency regimes, but mostly they fit the description of the tax distribution model. Such specificities may create questions in the application of the exclusion by member states who intend to adopt the GloBE Pillar Two rules.

As in general and while considering the spirit of a REIT, given its special purpose and role in society, the various local regimes are specifically designed to produce a single level of taxation, where the distribution obligation (a hallmark of the REIT regimes) warrants taxation at the level of the shareholder of the REITs.

We stress to the OECD that unless greater clarity is provided for REITs in the current version of the Pillar Two Blueprint, there is a risk for REITs not being fully considered for the purpose of its exclusion from the GloBE Pillar Two rules as being partially aligned with the tax transparency model and partially with the tax distribution model. We understand that such a situation would not have been intended considering the policy rationale behind the list of excluded entities lies in what REIT regimes fully represent.

⁵ Read more at https://prodapp.epra.com/media/EN_BSE_Report-V-ONLINE-justified_1532962119421.pdf.

⁶ See more: [EPRA Total Tax Contribution report 2020](#)

⁷ EPRA Global REIT Survey 2020 as available: [here](#)

EPRA MAIN RECOMMENDATION

To ensure clarity and legal certainty, we call on the OECD to refer to REIT regimes directly and as a stand-alone category of excluded entities. This approach would be consistent with the past OECD actions in relations to REITs and would bring a sought after clarity on whether REITs, as entities adhering to a qualifying REIT regime⁸, are excluded or not.

EPRA ALTERNATIVE RECOMMENDATION

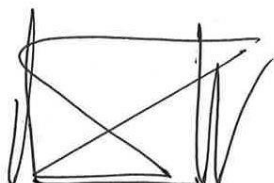
If the above recommendation would be considered unfeasible, then we request that the OECD lists REIT regimes directly and explicitly as one of the tax neutral regimes to be considered for the OECD exemption for the purpose of the application of GloBE Pillar Two rules (e.g. as an explicit example in relation to 2.3.6 of the Blueprint).

In that case, we would additionally request that the OECD aligns the exclusion of entities under the tax neutral regime with the model adopted for other categories of excluded entities. With regards to the international tax regulatory environment, we stress that clarity and simplicity are crucial in ensuring the right application of these complex rules. Therefore, we specifically call for REITs to be excluded as entities, which would significantly simplify the determination of the exemption and also its subsequent application by the respective REITs.

We appreciate the opportunity to provide comments on this important issue and remain at your disposal to either discuss our comments further or to provide additional information that would be useful. Please contact publicaffairs@epra.com if you would like to discuss this letter in greater detail.

Yours faithfully,

Dominique Moerenhout, Chief Executive Office at EPRA



Other contact persons:

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

Jana Bour
EPRA EU Policy Manager
M +32(0)471634899
j.bour@epra.com

⁸ Referring to the Tax Treaty Issues Related to REITs adopted by the OECD Committee on Fiscal Affairs on 20 June 2008.