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INREV response to Tax Challenges Arising from Digitalisation – OECD Report on Pillar Two Blueprint

INREV* welcomes the opportunity to comment on the recent OECD Public Consultation Document on Tax Challenges Arising from Digitalisation – Reports on the Pillar One and Pillar Two Blueprints (the “Public Consultation Document”).

We are very pleased that the OECD seeks the views of the stakeholders in the investment management industry in order to find appropriate solutions for the development of a coordinated set of rules to address on-going risks from structures that allow MNEs to shift profit to jurisdictions where they are subject to no or very low taxation.

In our response to the Public Consultation Document we will provide our views, consideration and suggestion on questions raised with reference to Pillar II. Chapter 2: Scope of the GloBE rules.

Comments

Paragraph 2.3 of the Public Consultation Document deals with the specific exclusion from the scope of the GloBE rules of entities or arrangements which have a particular purpose and status under the laws of the jurisdiction in which they are created or established. This status is likely to result in those entities not being exposed to domestic income tax in order to preserve a specific intended policy outcome under the laws of that jurisdiction.

A domestic tax outcome may, for example, be designed to ensure a single layer of taxation where investment vehicles are used by investors (e.g., funds).

INREV welcomes this clarification of the basic principle that the tax policy objectives of the domestic tax exemption for fund type of entities, are neither 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 proposal. We believe this to be true in particular for the sub-set of funds which we represent, that is to say unlisted real estate vehicles.

In line with the above described ground rule, INREV understands and agrees that the carve out from the Pillar Two Blueprint is also extended to an entity or arrangement that is established and operated to hold assets or invest funds for an excluded fund (i.e., pure holding vehicles). We welcome this extension as pure holding vehicles are widely used by members of INREV and are generally regarded as essential in the sector for risk management and financing reasons.

Definition of Investment Fund does not cover all non-CIV real estate fund structures

While the definition of excluded “Investment Funds”, referring to Investment entity of IFRS10 and AIMFD certainly covers a large part of the non-CIV real estate business, in the view of INREV, certain non-CIV real estate funds which fit the profile of entities and arrangements that the Blueprint report intends to carve out, are not included under the suggested Exclusion Entities Definitions.

For example, the definition of Investment entity as referred to in IFRS 10 requires fair value reporting which may not always be fund policy and does not allow for consolidated subsidiaries. Investment undertakings, such as family office vehicles which invest private wealth of investors without raising external capital may not be considered in scope as they are excluded from the AIFMD directive. Also, certain real estate holding structures may fall out of scope of regulation such as AIFMD if no divestment strategy is evidenced in the annual accounts.

INREV believes that the specific requirement that the fund, or the management of the fund, is subject to the regulatory regime for investment funds in the jurisdiction in which it is established or managed, can lead to a narrow implementation of the exclusion rule leading to the situation that, due to a lack of regulatory rules applicable, a non-CIV real estate fund structure that was exempt by policy makers to ensure only one layer of taxation at the real estate investment level, is faced with additional taxation under Pillar Two rules.

INREV believes that due to the specific tax treatment of real estate investments under the tax laws of the source state, which is supported by article 6 of the OECD Model Tax Convention on Income and Capital (Model Treaty), subjecting the income of non-CIV real estate fund entities to tax under the GloBE rules would undermine the policy objectives that the domestic jurisdiction is seeking to achieve by granting exemptions at intermediary level.

Therefore, INREV believes that a specific carve-out for non-CIV real estate funds is justified, irrespective of its regulatory status or qualification.

We refer to the INREV response to Global Anti-Base Erosion Proposal (GloBE) – Pillar Two, dated 2 December 2019, and earlier submissions¹ in which INREV explains how non-CIV real estate funds are not used to shift profit to jurisdictions where they are subject to no or very low taxation and therefore a broad exclusion is justified.

Conclusion

INREV believes that the basic carve out of certain Investment Funds is justified and aligned with the tax policy objectives of the GloBE rules; however, a limited and narrow application of the carve out for non-CIV real estate funds, for example by lack of regulatory application, is in breach with OECD commonly used principles in relation to real estate taxation. Therefore, non-CIV real estate fund structures should be carved out of Pillar Two completely.

¹ INREV response to OECD Discussion Draft “BEPS Action 6: preventing the granting of treaty benefits in inappropriate circumstances”, dated 14 March 2014; INREV response to OECD Public Discussion Draft “Follow Up Work on BEPS Action 6: Preventing Treaty Abuse”, dated 21 November 2014; INREV response to OECD “Revised Discussion Draft BEPS Action 6: Prevent Treaty Abuse”, 22 May 2015; INREV’s response to OECD’s “Public Discussion Draft: Treaty Entitlement of Non-CIV Funds”, dated 24 March 2016; INREV’s response to OECD’s “Public Discussion Draft on non-CIV examples” dated 1 February 2017 and INREV’s response to “Global Anti-Base Erosion Proposal (GloBE) – Pillar Two” dated 2 December 2019.



About INREV

INREV is the European Association for Investors in Non-Listed Real Estate Vehicles. Since its launch in 2003, it has grown to more than 460 members from 32 different countries. INREV's aim is to improve the accessibility of non-listed real estate funds for institutional investors by promoting greater transparency, professionalism and standards of best practice. INREV is led by institutional investors and supported by other market participants such as fund managers, investment banks, academics, lawyers and other advisors. As a Pan-European body, INREV represents a unique platform for sharing knowledge of the non-listed real estate investment industry.