Brussels, 28th March 2022
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EACB comments on the European Commission's consultation on the legislative proposal for a Directive on ensuring a global minimum level of taxation for multinational groups in the Union 2021/0433 (CNS)

With regard to the practical impact, the EACB asks the Commission to clarify:

- treatment of deferred taxes, given that - for purpose of determining turnover, taxes and the tax base - covered taxes include not only local taxes on income and earnings, but also complex corrections for deferred taxes (Articles 19-21);
- considering that the effective tax rates (ETR) are derived based on the country-by-country reports required in the Council Directive (EU) 2016/881, we would appreciate a specific mention of whether the Commission considers approving that the complex calculations using the formula of ETR specified in the proposed Directive are not made for jurisdictions in which a MNE group shows an ETR of 15% or more in its country-by-country report;
- as for equity participations in a foreign currency, there may be a mismatch in the Pillar 2 treatment of the (un)realised foreign exchange gains or losses on the participation and the (un)realised result on a hedging instrument that covers such a participation. The EACB would welcome a confirmation whether the opposing effects would both be treated in the same way (i.e., eliminated for Pillar 2 purposes);
- given that GloBE includes highly complex rules and regulations for transparent/hybrid companies, permanent establishments, joint ventures, M&A transactions that need to be reflected in the company's IT landscape, it should be taken into account that the transposition of Pillar 2 would entail the establishment of new *"GloBE company codes"*;
- which standard of calculation should be used, i.e., whether the MSs would be allowed to prescribe the valuation of assets according to national rules;
- whether a "*whitelist"* could include countries that already have in place sufficient taxation and for which an application of the minimum tax could thus be omitted;
- as regards joint ventures, it should be specified whether the "de minimis rule" could be applicable once the joint venture and its joint venture affiliates would meet the requirements for this rule.

Regarding the text of the proposal:

- as for the Article 11, we doubt that the concepts of an Ultimate Parent Entity established in the EU (UPE) and an Intermediate Parent Entity (IPE) are clearly established. From the recitals it can be read that the UTPR top-up tax will only be levied if an adequate IIR top-up tax is absent at either the level of an UPE or an IPE. In this respect Article 11 refers to a top-up tax levied from an UPE, but not of that of an IPE.
- we would encourage to consider an alignment of "participation exemption" under Article 15 of the proposed Directive on Pillar 2 with the notion of "parent company" as stated in Article 3 point 1 (a) of the EU Parent-Subsidiary Directive (Council Directive 2003/123/EC). Application of the same definition to the "participation exemption" would result in: "*'excluded dividend' means a dividend or another distribution received or accrued in respect of an ownership interest, except a dividend or another distribution received or accrued in respect of: i) an ownership interest in an entity for which the constituent entity*

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels
Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop

is not a 'parent company' in terms of Council Directive 2011/96/EU in the Member State of its establishment."

- as regards joint operations, there is a room for clarity on whether the special rules for joint ventures indeed do not apply to joint operations in which at least 50% is held, now that IFRS does not prescribe the equity method for these entities;
- it needs to be clarified whether the reduction of the top-up tax due by the joint venture group will also apply for the allocable share of a member of the joint venture that is not in scope of the Pillar 2 rules (e.g. due to its size);
- it would be appropriate to specify if Article 13 is applicable for situations in which the UPE is established in an EU country, and whether any remaining amount of top-up tax as mentioned in article 34 sub 4 cannot be added to the total UTPR top-up tax.

Contact:

For further information or questions on this paper, please contact:

- Mr. Volker Heegemann, Head of Department (v.heegemann@eacb.coop)
- Ms. Maryia Sulik, Adviser (maryia.sulik@eacb.coop)