

- Bundesverband E-Commerce und Versandhandel Deutschland e.V. (bevh) -

Position Paper

OECD Proposal on a Global Minimum Tax under Pillar Two

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bevh¹ welcomes in general the progress made at OECD level and the publication of the Pillar Two proposal on a global minimum tax. We acknowledge the need to update the international tax framework to make it fit for the business models of the 21st century. We believe that these changes need to be agreed on at global level as all unilateral measures would inevitably risk creating an unlevel playing field and lead to retaliation and double taxation. Therefore, we are very supportive to the work done at OECD level and appreciate the opportunity to provide feedback to the GloBE Proposal that was released on 8 November 2019.²

However, there is need for more clarification and simplification to ensure that the proposed system can be implemented and will serve its purpose to guarantee a fair level of taxation for all businesses at a global level.

1. Need for clarity and certainty

Any global solution must be as clear, simple and proportionate as possible in order to ensure that businesses can comply with the new rules and that they can be enforced by the tax authorities worldwide. Only a simple and practical solution will reduce the risk of disputes, promote legal certainty for the businesses and avoid multilayer taxation. In order to prevent businesses from being taxed twice, the potential interaction between the OECD Pillar One proposal and the OECD Pillar Two proposal also needs to be clarified. Moreover, the new global tax system must offer a way to deal with potential disputes. Therefore, it needs to be underpinned with a robust dispute resolution framework. In addition, there have to be clear rules, to which country the proposed top-up tax gets allocated.

¹ The German E-Commerce and Distance Selling Association (bevh) represents a dynamically growing membership of large and small distance selling businesses using the internet, catalogues, direct sales and TV as sales channels. They include both, companies with a very narrow product range and others with more than 100,000 articles in their inventory. Statistically, there are more specialists than generalist retailers among them. The German aggregate turnover in distance selling (goods) amounted to 65,1 billion EUR in 2018.

² <https://www.oecd.org/tax/beps/public-consultation-document-global-anti-base-erosion-proposal-pillar-two.pdf>

2. Ensuring a level playing field in law and enforcement

The proposed global minimum tax would ensure a level playing field on various levels. On the one hand, it would eliminate the race to the bottom on corporate taxes between countries and limit tax competition between them to an absolute minimum. On the other hand, the Pillar Two tax would apply to all companies in the same way, no matter their business models or sales channels. Contrary to the Pillar One proposal that is targeted at the “consumer-facing” industry, it would avoid ringfencing certain sectors. As the analysis of other proposals on digital taxation have shown, ringfencing certain industries such as the digital sector risks to have a negative impact on investments that are necessary to ensure the competitiveness of businesses in the 21st century.

Besides the creation of a level playing field at legal level, it is also of crucial importance that all countries ensure the same level of enforcement of the tax. Otherwise, differences in taxation between different jurisdictions will continue to persist and unlevel the playing field for the benefit of certain countries and business models.

3. Need for common global accounting standards

We agree that the financial accounts of companies provide a good basis for the calculation of the proposed tax. From our point of view, the financial accounts should be drawn up at global level by the ultimate parent entity on an annual basis. Calculations at the level of the country or the legal entity would be too burdensome, as these calculations are usually not prepared today and are not audited, which makes this approach prone to disputes. In case these country or entity-level calculations turn out to be inevitable, at least MNEs whose effective tax rate is above the required minimum percentage should be exempt from the obligation of providing country- or entity-level calculations to reduce the administrative burden for businesses.

In general, the administrative burden for businesses and tax authorities resulting from the Pillar Two approach needs to be taken into account. As long as there are different rules for accounting applicable in different jurisdiction, it will be impossible to compare income globally. However, in order to be able to enforce the tax, it is necessary to guarantee the comparability of financial statements worldwide. This is only possible with common global accounting standards.

Therefore, such system can only work if international accounting standards are applied in a harmonised way globally. Moreover, the application of different accounting standards in different countries could potentially lead again to competitive advantages for some states. In addition, the application of the same accounting standards globally would also help to avoid situations where there are permanent differences between financial accounting income and taxable income as described in the proposal.

4. Need for thresholds

It is very important to introduce a threshold for the application of the proposed tax protecting not only SMEs from a decrease of investments, but also digitally less developed countries. In order to set up a business and in order to contribute to the digital development of countries, investments are needed, and it is clear that, during the first phase, losses will be made. In order to prevent investors and businesses from shying away from these investments and to encourage them to contribute to economic growth instead, losses should be clearly exempt from this tax. The threshold should ideally be consistent with the one proposed in Pillar One, but without ring-fencing “consumer-facing” businesses.

5. Final Remarks

bevh looks forward to continuing its support to the work done at OECD level in order to ensure that a stable and enforceable agreement on a new taxation system will be reached at global level that ensures a level playing field between all businesses and avoids further fragmentation because of unilateral measures. In this sense, it also needs to be clarified in the future, how the proposed tax will be exactly transposed into national tax systems to guarantee a harmonised level of enforcement globally.