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The Honourable Randal K. Quarles
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**Addressing the Tax Challenges of the Digital Economy**

Dear Sir/Madam

Ahead of the G20 meetings in Japan later on this month we would like to draw your attention on the OECD work addressing the Tax Challenges of the Digitalisation of The Economy.

The International Banking Federation [1] has been active in its engagement with the OECD in relation to ongoing consultation on the taxation of the digital economy. In this regard, we have made several written submissions to the OECD, and members of our tax working group have met with OECD representatives, most recently on 19 March and 17 May 2019. As agreed in our last meeting with the OECD we will be providing further information in relation to general activities carried on by global banks and he two Pillars of issues raised in the OECD programme of work that was recently released.

We now take this opportunity to share a summary of our views with you below. The documents provided to the OECD are provided as attachments to this letter and provide our full commentary.

The key observations made to the OECD are summarised below:

[1] The International Banking Federation (IBFed) was formed in 2004 to represent the combined views of its national banking associations. The IBFed collectively represents more than 18,000 banks, including more than two thirds of the largest 1,000 banks in the world. IBFed member banks play a crucial role in supporting and promoting economic growth by managing worldwide assets of over 75 trillion Euros, by extending consumer and business credit of over 40 trillion Euros across the globe, and by collectively employing over 6 million people. The IBFed represents every major financial centre and its members' activities take place globally. With its worldwide reach the IBFed is a key representative of the global banking industry, actively promoting the role banks play in economic prosperity and exchanging with international standard setters on subjects with an international dimension or with an important impact on its members. The IBFed takes a strategic approach to advocacy and may collaborate with other industry organizations to amplify our advocacy messages.

***Banking structure and differences to other business***

- Banks are generally regulated with scrutiny in jurisdictions in which they operate, and exercise their activities under a licence and applicable banking laws. Banks must meet ongoing and increasing regulatory capital requirements, they are subject to information disclosure requirements and transparency laws, and must deal with increasing threats to data security. In turn, the highly regulated industry allows access to capital markets and a low cost of funds. This means that banks pay tax in the right jurisdictions because their operations in each jurisdiction generally require a taxable presence to be established. In fact, banks are subject to higher overall rates of tax in the form of bank levies and surcharges in many OECD countries.
- The funding structure of banks needs to be considered for any new framework. As banks are largely debt funded, they are required to hold enough regulatory capital and buffers to cope with instability and liquidity shortages. This differs from other multinationals and any new rule set should be sensitive to the requirements imposed on banks.
- Banks are actively embracing technology changes and digitisation of their business, although the fundamentals of banking business remains the same. They are presented with unique challenges in the form of digital disruptors seeking to obtain market share.
- Banks do not generally adopt limited risk distribution models when providing cross-border services because that is generally inconsistent with requirement for banks to be licensed and hold regulatory capital in the jurisdictions in which they operate.
- Banks do not actively develop marketing intangibles (e.g. by having strong brand recognition through promotion and marketing) in a jurisdiction in which they are not also licensed to operate (and where they do not already have a taxable presence through a branch or subsidiary). Marketing intangibles have little if any relevance to banks providing business to business products and services in the wholesale and institutional markets. Banks do not derive non-routine income from marketing intangibles. Banking business largely comprises routine activities whereby related party transactions are adequately covered under the existing transfer pricing framework including the arm's length principle.

***Proposed tax reform***

- The existing corporate tax framework adequately captures profits earned by banks, both traditional banking services and newer digitalised services. Banks utilise data that they obtain from their customers to provide services which in turn are subject to tax. Accordingly, to the extent that there is any monetisation of data by a bank, this will be reflected in the profits already subject to taxation.

- Global banks largely operate through branch structures in offshore jurisdictions for regulatory capital reasons. The OECD Report on the Attribution of Profits to Permanent Establishments (2010) is well accepted guidance for banks on the attribution of profit between their head office and offshore branch operations. Revenue authority guidance and industry practice is well understood and established on profit attribution principles as they apply to banks. Deviation from those principles would cause significant impact to banks and their operations.
- Any reform should be based on international consensus and agreement. To the extent to which countries implement unilateral measures that impact financial services, there is the potential for unintended tax consequences for global banks. This can include the risk of double taxation if double taxation agreements are not amended or a global consensus is not agreed. Consideration should be made as to whether banks and financial services groups should be specifically excluded from these proposed measures.
- Any interim solution (e.g. a Digital Services Tax) should proceed with careful consideration of its potential scope, nexus, rate, collection mechanism and detailed design. Financial services should be excluded from the scope of any interim solution.
- Banks do not establish an offshore regulated presence to obtain the benefit of low taxation as profits are generally returned and subjected to tax in the head company jurisdiction. An income inclusion (minimum tax) rule has the potential to impact all multinationals (not only banks) which have operations in low tax jurisdictions. It would be important to identify the appropriate base and rate for a global minimum tax. We appreciate that significant technical aspects need to be considered as part of the design of such a rule.

We thank you for your attention and hope that the meetings in Japan will be fruitful.

Yours sincerely,

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Managing Director IBFed

Michael Barbour
Chair of the IBFed Tax WG

**Attachments**

The following documents are attached to this letter, and provide further detailed commentary.

- Letters to the OECD dated 3 May 2019 and 5 March 2019 in response to the OECD's consultation document *"Addressing the Tax Challenges of the Digitalisation of The Economy – 13 February – 1 March 2019"*
- Letter to the OECD dated 25 September 2016 entitled *"Taxation of the Digital Economy"*
- IBFed policy paper dated 1 April 2016 entitled *"Why International Banks are Different*); and