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OECD Centre for Tax Policy and Administration
Email: cfa@oecd.org

Dear Sir/Madam

Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy – Treatment of AT1 Capital under Pillar 2

We refer to our previous submissions and comments on Pillar 2, with regard to both the Blueprint document and subsequent statements by the OECD (released on 1 July and 8 October 2021).

Specifically, we refer to our submission dated 14 December 2020 which set out our concern around regulatory capital instruments and adverse outcomes that could arise for Additional Tier 1 (AT1) Capital under the then proposed Global anti-Base Erosion (GLoBE) rules in Pillar 2. Some of our members continue to express concern that this issue may not have been sufficiently addressed. Below are further comments for your attention and consideration.

Treatment of AT1 under GLoBE

From a tax perspective many jurisdictions, for sound policy reasons, treat AT1 as debt instruments with the result that coupons are deductible for the issuer and taxable for the holder. Whilst these coupons reduce the tax liability of the issuer, no account of these costs would be taken into consideration of calculating the GloBE income because, under IFRS, AT1 instruments are typically equity accounted. This is a permanent book to tax difference which it would be appropriate to adjust for under Pillar 2 (by allowing a GLoBE deduction). Denying a GLoBE deduction purely on the basis that the instruments are equity accounted, would penalise regulated entities that issue these instruments for regulatory reasons.

This is not a hypothetical concern. It is anticipated that in some circumstances top up tax will actually become payable due to this permanent book to tax difference. This is an issue in jurisdictions where the tax rate is close to the Pillar 2 minimum rate and the AT1 deduction is sufficient to push the effective tax rate below the minimum rate. It could also arise where the AT1 deduction is the difference between being loss making or profit making in a jurisdiction in a particular year.

We have previously highlighted that there is asymmetrical accounting treatment of AT1 coupons (with the payment being taken through equity, and the income being taken through the income statement). This asymmetry makes it critical to have an adjustment for GLoBE purposes – i.e. it is not possible to simply follow the accounts as this would result in AT1 instruments issued intra-group leading to the risk of inappropriate and duplicative top up taxes, for each jurisdiction they pass

through when funding is downstreamed through a chain of entities, as the coupon received by an intermediary subsidiary and reflected in its income statements could be taken into account in calculating the ETR in the absence of a specific exclusion.

Recognising that an adjustment is required to ensure AT1 are treated fairly under the GLoBE rules, we urge the OECD to consider the following two options to deal with this asymmetry:

1. An adjustment to deduct AT1 dividends from the base for calculating the ETR at the level of the holder of the securities in the group;
2. Allowing AT1 instruments to be reclassified as debt instruments for GLoBE purposes where that is the actual tax treatment in the jurisdiction of the issuer.

Attached in the appendix is a non-exhaustive list of jurisdictions where tax deductions are available for AT1 distributions.

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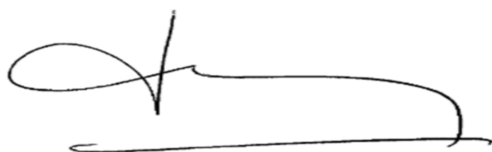
We remain available and should be pleased to discuss any issues in relation to the above. Should you have any questions or require additional input please contact us.

Yours sincerely,



Hedwige Nuyens
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Michael Barbour
Chair of the IBFed Tax WG

Appendix – non-exhaustive list of jurisdictions where a tax deduction is available for AT1 distributions

United Kingdom
Belgium
Switzerland
Germany
Luxemburg
Austria
New Zealand