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VIA EMAIL CFA@OECD.ORG

Centre for Tax Policy and Administration
2, rue Andre Pascal
75016 Paris
France

Re: Mayer Brown Response to Pillar Two Consultation – GILTI Co-existence

Dear Sir/Madam:

Mayer Brown is pleased to have the opportunity to provide comments to the public consultation document for the OECD's Report on the Pillar Two Blueprint. Mayer Brown is a global law firm representing clients in multiple industries around the world. We are submitting these comments in the name of Mayer Brown and not on behalf of any particular client.

While we believe that there are numerous technical and policy challenges associated with the proposed GloBE regime, we are restricting our comments at this time solely to the "GILTI co-existence" issue, namely the interaction between GloBE and the application of the U.S. global intangible low-taxed income ("GILTI") regime to U.S. multinationals. As discussed further below, we believe that GILTI should be considered a compliant regime for all purposes of GloBE and that no changes to U.S. legislation are necessary to bring the United States into compliance with GloBE.

The proposed GloBE regime is comprised of three separate taxation rules, the income inclusion rule ("IIR"), the undertaxed payments rule ("UTPR") and the subject to tax rule ("STTR"). The Pillar Two Blueprint indicates that GILTI should be considered a compliant regime for purposes of the IIR.

Consistent with the IIR, GILTI operates to ensure that a minimum level of taxation is imposed on income earned by a controlled foreign corporation ("CFC"). GILTI applies to every intermediate CFC in the chain of entities controlled by a U.S. multinational. As a result, GILTI also insures that payments between CFC's are subject to a minimum level of taxation. Therefore, there is no need to apply a separate UTPR or STTR where GILTI already applies.

The Economic Impact Assessment acknowledges this point by modeling in the revenue effects of GILTI for purposes of Pillar Two as a whole rather than any one specific GloBE rule. GILTI comprises 20% of the total estimated combined GloBE revenue effects. In other words, U.S. multinationals alone are already contributing 20% of the total global tax revenue expected to be raised by Pillar Two. This is roughly equivalent to the United States' share of global gross domestic product.

The GILTI rules were enacted in 2017 and U.S. multinationals have made substantial changes to their supply chains and internal accounting and IT systems to become compliant with GILTI. In short, GILTI works as a known and understood regime that is achieving the objectives sought by Pillar Two. Adding additional layers of rules on top of GILTI will have negligible revenue effects and will erode confidence and compliance in the two-Pillar process.

Accordingly, we strongly recommend that GILTI be considered a compliant regime for all purposes of Pillar Two.

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Thank you again for the opportunity to provide our comments to the Public Consultation Document. Please direct questions with respect to our comments to any of the following:

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Respectfully submitted,

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