

OECD - Organisation for Economic Co-Operation and Development

Centre for Tax Policy and Administration

International Cooperation and Tax Administration Division

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SUBJECT:

Implementation of Excluded Entity status for Real Estate Investment Vehicles under Pillar Two

Ladies and Gentlemen,

On behalf of the undersigned real estate organizations, we are writing to follow up on our prior letters of December 6, 2019 and December 14, 2020 regarding the treatment of Real Estate Investment Trusts (REITs) under Pillar Two.

There are currently 41 countries and regions, accounting for 85% of global GDP with a combined population of nearly 5 billion people, that have enacted REIT legislation.¹ Today, there are 865 listed REITs operating around the globe. Since 1990, the equity market capitalization of listed REITs has grown from about \$10 billion to more than \$2.5 trillion at the end of 2021.²

Together the members of the undersigned organizations represent the vast majority of the constituent companies included in the FTSE EPRA/Nareit Global Real Estate Index, which are major listed property investment companies (including REITs) that own, develop and sell investment property. Our organizations have worked with the OECD for almost 20 years on various cross-border tax proposals and issues of relevance because of the significant globalization of investment in and through REITs. The specific guidance on REITs that the OECD has provided over the years has been invaluable in providing needed clarity regarding tax matters associated with cross-border investment in this important sector of the global economy.

The undersigned organizations very much appreciate the OECD's inclusion of rules providing Excluded Entity status to Real Estate Investment Vehicles (REIVs) that are Ultimate Parent Entities in the GloBE Model Rules under Pillar Two released in December 2021 and the further explanatory narrative provided

¹ The terms 'REIT legislation' or 'REIT regime' in this letter includes collective investment vehicle frameworks which provide tax flow-through treatment for REITs but do not exclude further tax frameworks or legislation of different denomination entailing the same principle.

² See <https://www.reit.com/sites/default/files/2022-02/2022-Global-REIT-Brochure.pdf>.

in the related Commentary released in March 2022. This treatment reflects the recognition that the policy objectives of domestic REIT regimes neither are inconsistent with the tax policy objectives of Pillar Two nor create a competitive distortion that would undermine such tax policy objectives. Moreover, the provision of a specific exclusion for REIVs reflects the recognition of the importance of certainty regarding the exclusion of REITs from Pillar Two in ensuring that achievement of the policy objectives of domestic REIT regimes is not undermined by Pillar Two.

We are making this submission to stress the need to ensure that the implementation of the rules providing Excluded Entity status to REIVs under Pillar Two provides the certainty that is necessary to protect the policy objectives of domestic REIT regimes.

The REIV definition in the GloBE Model Rules draws from the prior OECD work in the tax treaty context, where bilateral tax treaties recognize the status of REITs in each of the treaty jurisdictions for purposes of providing treaty benefits to such entities. On an overall basis, the REIV definition aligns with core requirements for REIT status in domestic REIT regimes around the world, which generally provide for a single layer of taxation either in the hands of the entity or the hands of the entity's interest holders where the entity holds predominantly immovable property and its interests are widely held.

However, as noted in our December 14, 2020 letter, domestic REIT regimes vary in some respects from jurisdiction to jurisdiction. Moreover, while the requirements of the REIV definition are broadly aligned with requirements for REIT status in jurisdictions' domestic regimes, most domestic regimes include more detailed and specific rules with respect to such requirements. For example, many domestic REIT regimes include detailed rules regarding the requirement to hold predominantly immovable property.

Given the generality of the requirements set forth in the REIV definition, more guidance is needed on how the determination is to be made as to whether an entity that is a REIT in its home jurisdiction qualifies as a REIV for purposes of Pillar Two in order to ensure consistent treatment by all jurisdictions that could seek to impose top-up tax under Pillar Two on such entity if it were not an Excluded Entity. Without certainty regarding the consistent treatment of an entity as a REIV for Pillar Two purposes, the policy objectives of providing Excluded Entity status for REIVs that are Ultimate Parent Entities under Pillar Two would not be achieved and the tax-neutral treatment provided by domestic REIT regimes would be undermined.

Because the objective of the REIV exclusion from Pillar Two centers on protecting the tax-neutral investment vehicle treatment provided to an entity under the domestic REIT regime of its home jurisdiction, we believe that the guidance provided in the Pillar Two Implementation Framework should reflect deference to the specific requirements of the domestic REIT regime of the entity's home jurisdiction. This would ensure that those entities that are granted REIT status by their home jurisdiction have that tax-neutral investment vehicle status protected through the REIV exclusion against imposition of Pillar Two top-up taxes by other jurisdictions.

We urge that guidance be provided in the Pillar Two Implementation Framework to make clear that an entity that qualifies under the REIT regime of its home jurisdiction qualifies as a REIV for Pillar Two purposes, unless there has been a specific determination agreed by the Inclusive Framework and published by the OECD that such jurisdiction's REIT regime has one or more requirements that are broader than the corresponding general requirement of the REIV definition. Such guidance should further provide that where such a determination regarding a jurisdiction's REIT regime has been agreed and published,

an entity nevertheless qualifies as a REIV for Pillar Two purposes if it demonstrates that it meets the narrower requirement or requirements of the REIV definition (notwithstanding the broader requirements under the applicable REIT regime). As an alternative, guidance could be provided in the Pillar Two Implementation Framework specifying that an entity that qualifies under the REIT regime of its home jurisdiction qualifies as a REIV for Pillar Two purposes if its home jurisdiction's REIT regime has been recognized for treaty benefits in at least one of such jurisdiction's bilateral tax treaties with a jurisdiction that is an Inclusive Framework member.

We appreciate your consideration of this important issue and would be happy to discuss it with you or provide any additional information that would be useful. Please contact Tony Edwards (TEdwards@nareit.com) or Tobias Steinmann (t.steinmann@epa.com) if you would like to discuss this letter.

Respectfully submitted,

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