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Citizens' Coalition for Economic Justice

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## COMMENTS BY KOREAN CIVIL SOCIETY

*before*

**OECD / G20**

# Against the OECD's proposed “Global Anti-Base Erosion” under Pillar Two

Citizens' Coalition for Economic Justice\*

Republic of Korea

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1. Korean civil society also lodges a strong protest with OECD over one's proposed “Global Anti-Base Erosion (GloBE),” a blending approach itself that would make misuse of financial accounting standards as a starting point for dropping the arm's-length price and destroying the well-established tax base. Your proposal sounds crazy.

2. Because it would rather make nothing than open a new can of worms like any turf battles, we the citizens cannot help but advise you against setting any blending approaches at all levels. Why should you go all the way around Robin Hood's barn? Don't ask for trouble. That kind of the blending approach as well as the unified approach is based on one's false premise and *sollen* that ought to allocate taxable income among all the country and that would be a fiscally transparent entity above its arm's length. And in doing so, it seems, in cost-saving compliance with any standards, as if the use of

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\* This statement was contributed by our true activist, Hochul Jung ([hciung@ccej.or.kr](mailto:hciung@ccej.or.kr)) and our peer reviewers, Prof. Hyochang Pang ([hcpang@doowon.ac.kr](mailto:hcpang@doowon.ac.kr)) and Prof. Hoon Park ([phn@uos.ac.kr](mailto:phn@uos.ac.kr)) in order to give our comments to OECD ([taxpublicconsultation@oecd.org](mailto:taxpublicconsultation@oecd.org)), to facilitate the G20 BEPS Project; and in the new order to take their BEPS Actions for the digital taxation of Information Technology Multinational Enterprises in the name of the “Google Tax.”

If you need more information about us.

■ Please, visit us: <http://ccej.or.kr/eng/who-we-are/about-us/>;

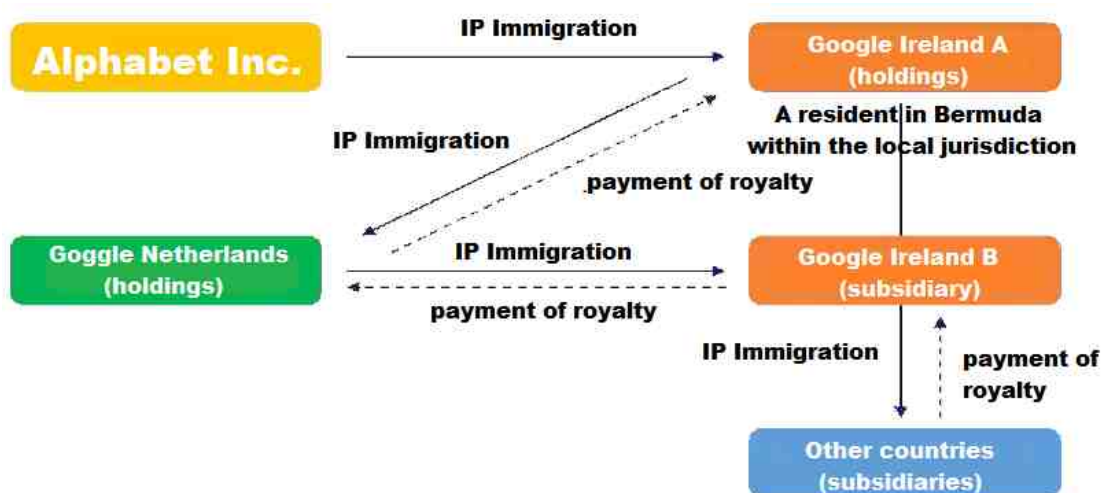
■ Refer to our Achievements (RLA, 2003): <http://www.rightlivelivelihoodaward.org/laureates/citizens-coalition-for-economic-justice-ccej/>

■ The CCEJ, the Korea's first fully-fledged NGO, operates on the basis of principles of PUBLIC GOOD and NONPROFIT and NONPARTISAN 1

the consolidated financial accounts should've been a prerequisite for the key to success for the BEPS Project. But you're way off base. As you know about the more opaque pricing and accounting at the lower effective tax rate, if we *coulda* too easily distinguished between profit shifting and transfer pricing out of consolidated financial statements and *shoulda* so simply computed the transfer pricing taxation and the tax base determination by using such an accounting standard, we *woulda* been never concerned about BEPS issues at any rate. Thus, we have no reason at all to determine our ultimate success or failure in the blending approach itself to the GloBE tax base by setting any accounting rules, exceptions or variations. That's a long shot like a pipe dream.

3. Of course, we recognize the necessity of using a single criterion, such as International Financial Reporting Standards (IFRS), as a *ceteris paribus* clause to reduce variables. However, neither any accounting rules nor allocation rules, just need we have our own taxability to the non-physical presence within the market jurisdiction as well as the local jurisdiction. That's it. You only give all us such a taxing right in the new order to set non-physical rules based on the destination principle in full agreement with the fact of digital economic nexus around the world. At least one thing is for sure; unless there is such a single standard for the evaluation of intangible assets and for the assessment of digital tax, this world is going to trigger the warfare of the taxation off to high-tax competitions due to the IP immigration and transfer pricing. This is why we have challenged the BEPS Actions up to this very moment.

### Double Irish with Dutch Sandwich (DIDS)



\*Source: Pang (2019)

4. We especially emphasize that the IP Immigration and transfer pricing are the Base erosion and profit shifting. Of the most particular interest to a complex structure of DIDS, are the IP Immigration and transfer pricing between America and Netherlands and Ireland linked to other jurisdictions around the world. Still, we are concerned about that the GloBE tax base determination and political prejudice *shall* not catch their insider trading and stealable offsets between subsidiaries. So we urge to deal with this problem to be fair in collecting tax and in setting the exception principle, exclusion and application between temporary and permanent differences. I felt as if you shall sell these off the books.

5. On top of that, we strongly emphasize that the “manufacturing” business will have to be excluded from the GloBE tax base. Off base! Because this tax base is supposed to be limited to IT-MNEs, a taxpayer that has engrossingly focused on intangible assets. So far as the international community takes keynote of taxing the Digital Economy, every country would have to acquire taxability to levy on intangible assets of IT-MNEs own in better accord with the international tax system even if there is no any fixed place of business in the established market jurisdiction, where there are some “taxable” income they owned in their remote marketplace, in non-physical presence, and in significant presence of digital economy, such as big data, information, or any services: these things are consumed, traded and sold through their cloud service or their virtual platform, thanks to their own intangible assets that may go across borders freely and thanks to their fixed return that can be freely transferred to the tax heaven they permanently resided in for BEPS. They’re so easily exploiting it. Therefore, we arrived at our agreement for the BEPS Actions.

Unlike the IT business that engrosses on intangible assets, whereas in the case of tangible assets on which the manufacturing consumer goods business focuses in physical presence—in fact, there is no reason for the base erosion; because the operating income as to final goods and sales as belonging from local factory to overseas subsidiaries must have been already subject to local taxation in substance in full accordance with the current international tax system. Also, there is no reason for the profit shifting; because the business profit by the international trading local products, a bit of transfer pricing from such daughter companies to a parent company, must have been already subject to local tariffs in full accordance with the international trade system. Nonetheless, the GloBE tax base would determine the same modality between “the one’s own intangible assets that are subject to the engrossment of the global market” and “the other’s tangible assets that are subject to a cost-saving measure of the global value chain, (viz.), the manufacture, the division of labor and the division of profits.” As a result, that distortion would be going to trigger off double taxations and retaliatory tariffs. In this context, we seriously concerned about the turf battles among countries that can beat these international economic systems and join to plunder others’ tax revenue as well as ours.

6. Therefore, we call on you NOT to inflate the GloBE tax base into the other businesses, a distortion that is targeting at the digital technology manufacturers and their final products and sales to be squashing a consumer base. That meant, technically it is supposed to separate this consumer-facing business, such as consumer goods and manufacturing businesses—for example, automotive industry, consumer electronics industry, smartphone industry, or semiconductor industry—from that kind of this scope; the one's own cost-effective intangible assets are totally different from such tangible assets of this business for the other's own efforts-to-be-cost-saving.

7. For unless you'll set an example of the other MNEs' tangible assets to be subject to the GloBE tax base determination, we can't help failing in the GloBE proposal and efforts, in simplifying and in reducing any compliance costs. Why must you make the others' established tax base too complicated? You shouldn't have made the other MNEs to be a sacrificial lamb on your own ways. They're a good, healthy taxpayer. Unlike IT-MNEs. So you have to make a particular target only IT-MNE's own intangible assets to develop into the GloBE tax base as well as the digital taxation. Basically, the starting point of BEPS Project were to change these assets taxable, transfer price into the arm's-length price above IP immigration. You have to remove their error caused by it effectively. This is the unique purpose of the project.

8. Good luck!