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INSIGHTS ON PILLAR TWO - GLOBAL ANTI-BASE EROSION RULES *(GloBE RULES)*

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FROM OUR CEO

In recent years, the international tax landscape has undergone a remarkable transformation, ushering in a new era of transparency and cooperation. As countries strive to address tax avoidance and ensure a level playing field, rigorous measures have been implemented to close loopholes and enhance cross-border information sharing. This evolving paradigm emphasizes fair taxation, promotes global economic stability, and fosters a climate of trust and accountability among nations. The changing international tax landscape heralds an era where integrity and collaboration are paramount, shaping a more equitable and sustainable global economy.

Despite efforts to reform the international tax rules over the last decade, several challenges persist in the current system. One key issue is the complexity and lack of uniformity across jurisdictions, leading to a fragmented framework that can result in tax evasion and profit shifting. The emergence of digital economy and e-commerce further exacerbates these challenges, as traditional tax rules struggle to keep pace with the evolving business models and profit shifting techniques. Additionally, competition among countries to attract foreign investment often results in aggressive tax planning strategies, creating an environment of harmful tax competition. These problems highlight the need for continued collaboration and coordination among nations to address the digitalized economy and prevent base erosion and profit shifting.

BEPS 2.0 proposes to address these challenges. The OECD's two-pillar policy represents a transformative approach to global taxation, tackling issues related to the digital economy and multinational tax avoidance by implementing rules for fair profit allocation and establishing a global minimum tax. Pillar One is a proposal to tax large multi-national enterprises (MNEs) by reallocating a share of profit to those jurisdictions where they have a significant consumer presence, even if they lack a physical presence. Pillar Two, on the other hand, comprises the Subject to Tax rule (STTR) and the Global Anti-Base Erosion (GloBE) Rules. The GloBE Rules propose to impose a global minimum tax on specified MNEs in every jurisdiction where they have a physical presence, thereby discouraging profit shifting and ending the culture of tax havens and aggressive tax incentives by the governments. While the final rules for Pillar One are expected to come out later in 2023, the Pillar Two proposal has gained significant momentum with both the GloBE Rules and STTR already finalized.

Within Pillar Two, the GloBE Rules were finalised in December 2021 and countries have initiated the process of embracing them in their local laws. The STTR have been recently finalised on July 17, 2023 and we shall soon see the implementation process.

The OECD's commitment to implement the two-pillar solution is further highlighted by the G20 chair's speech at the first G20 meeting of 2023 in Bengaluru – "We will continue our cooperation for a globally fair, sustainable, and modern international tax system fit for purpose for the 21st century. We remain committed to the swift implementation of the OECD/G20 two-pillar international tax package...We welcome the release of the GloBE Implementation Framework which facilitates implementation of GloBE Rules as a common approach…"

139 Inclusive Framework (IF) countries representing more than 90% of global GDP have come together to endorse the BEPS 2.0 proposals. The adoption of GloBE Rules is led by the European Union (EU). South Korea, Japan, UK and Switzerland have formally passed the domestic legislation to adopt GloBE Rules from 2024. A number of other leading economies, namely Netherlands (2024), Germany (2024), Sweden (2024), Australia (2024), New Zealand (2024) and Singapore (2025), have initiated the process of adopting GloBE Rules and issued draft legislation while other economies, namely Mexico, Canada, Mauritius, and Malaysia, have formally indicated they will introduce the GloBE Rules.

Dhruva has been unwavering in its commitment to providing exceptional resources, innovative ideas, and effective solutions for navigating the complex realm of tax and regulatory matters. We have consistently aimed to empower businesses and individuals with the knowledge and tools they need to navigate the intricate tax landscape, ensuring compliance, minimizing risks, and optimizing financial outcomes. It is in this spirit that we have created an FAQ booklet addressing common queries on GloBE Rules, which serves as a valuable resource for various stakeholders. This booklet offers an understanding around the fundamental aspects of GloBE Rules, ensuring stakeholders gain a holistic knowledge of its key principles and implications.

Within this FAQ booklet, we have taken great care to demystify the fundamentals of the GloBE Rules, presenting them in simple and clear language. I am confident that readers will find this FAQ booklet a valuable and practical resource in navigating the complexities of the GloBE Rules. As always, I eagerly await your comments and feedback.

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INTRODUCTION

The digital revolution has brought about a fundamental shift in how businesses operate and generate value. Traditional notions of physical presence and territorial boundaries no longer hold true in an increasingly digitalized economy. This has created challenges for tax authorities worldwide, as they struggle to capture and tax the intangible and cross-border nature of digital transactions and business models. The need for a comprehensive and coordinated approach to taxation has become imperative to ensure a fair and equitable distribution of tax burdens in this new economic landscape.

One consequence of the globalized economy and the digital revolution is the intensification of tax competition among countries. In an effort to attract foreign investment, countries often engage in a "race to the bottom" by lowering their corporate tax rates. This competition creates a favorable environment for multinational enterprises to divert profits to low-tax jurisdictions, where they can minimize their overall tax liabilities. Such profit-shifting practices erode tax bases in higher-tax jurisdictions and undermine the fairness and effectiveness of the international tax system. Addressing this issue requires international cooperation and the implementation of measures to combat base erosion and profit shifting.

It is in response to these challenges that the Organisation for Economic Cooperation and Development/G20 Inclusive Framework (OECD IF) has developed a comprehensive two-pillar solution under the BEPS 2.0 proposals. The two-pillar solution proposed by the OECD IF represents a groundbreaking approach to address the challenges of international taxation in the digital age. The OECD IF has released extensive literature on both Pillar One and Pillar Two. While the Pillar One proposal is expected to be finalised by end of 2023, GloBE Rules (part of the Pillar Two proposal) are already starting to be implemented in various countries across the world.

The significant changes introduced to the international tax landscape through the OECD IF's Pillar Two GloBE Rules have prompted the need for an FAQ booklet. This resource aims to address the concerns and confusions arising from the complex rules and to provide clarity and understanding to businesses and individuals navigating the evolving global tax environment.

We remain available and shall be pleased to address any questions.

FAQs - FRAMEWORK

The OECD IF's two-pillar policy represents a transformative approach to global taxation, tackling issues related to the digital economy and multinational tax avoidance by implementing rules for fair profit allocation and establishing a global minimum tax. While the Pillar One proposal is expected to be finalised by end of 2023, the Pillar Two proposal has gained significant momentum and is already starting to be implemented in various countries around the world.

In this guide, we will delve into the intricacies of the Pillar Two - Global Anti-Base Erosion (GloBE) rules, which proposes a transformative framework to prevent multinational enterprises from shifting profits to low-tax jurisdictions by ensuring that they pay a minimum of 15% tax in every jurisdiction where they operate.

At the end, the guide also provides an illustration for the readers to understand the genesis of the two-pillar solution and interplay of Pillar One and Pillar Two rules.

1. What are the shortcomings in the existing international tax framework that have called for ground-breaking amendments in the international tax rules?

The international tax rules currently in place, which originated from agreements made in the 1920s and are upheld by bilateral tax treaties, face two main challenges:[1]

A. Limited Taxation on Digital Business

The first problem stems from the fact that the old rules state that the profits of a foreign company can only be taxed in a country where the company has a physical presence. While this approach made sense a century ago when business activities were predominantly centred around physical goods and tangible assets, it fails to address the reality of today's digitalised world. Multinational Enterprises (MNEs) now conduct substantial business activities in jurisdictions where they have minimal or no physical presence. As a result, these MNEs can generate significant profits from digital operations without being subject to taxation in those jurisdictions.

B. Escaping Taxation on Foreign Income:

The second issue arises from the practice of most countries taxing only the domestic business income of their MNEs, assuming that foreign profits will be taxed in the countries where they are earned. However, the proliferation of intangible assets such as brands, patents, and copyrights, combined with the ability of companies to shift profits to jurisdictions with low or no taxes, has enabled MNEs to avoid taxation on a substantial portion of their profits. Moreover, tax competition among jurisdictions, where some countries offer reduced or zero taxation to attract foreign direct investment, further complicates the matter, creating opportunities for MNEs to minimise their overall tax obligations.

These two problems highlight the outdated nature of the existing international tax rules and the need for reforms to address the digitalised economy, intangible assets, profit shifting, and tax competition among jurisdictions.

These outdated international tax rules have created opportunities for Base Erosion and Profit Shifting (BEPS) in the digitalised and globalised business environment. This has triggered bold moves by policymakers to restore confidence in the system. To address these challenges, the OECD IF's developed BEPS 1.0 and, later, BEPS 2.0 projects.

2. What was BEPS 1.0, and did it accomplish its desired objectives?

The OECD IF's BEPS 1.0, published in 2015, comprised 15 action plans that aimed to enhance transparency, prevent treaty abuse, align taxation with substance, and ensure that profits are taxed where the economic activities generating the profits are conducted and where value is created. India's adoption of the equalisation levy, significant economic presence, interest limitation rules, and country-by-country reporting (CbCR) under BEPS 1.0 aimed to capture tax revenues from the digital economy and prevent profit shifting. Although implementation of BEPS 1.0 Action Plans attempted to change the international tax landscape and

1. As per OECD/G20 Base Erosion and Profit Shifting Project 'Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy', October 2021.

improved the fairness of tax systems to a certain extent, there was a key unresolved issue of BEPS 1.0 – to address the tax challenges arising from the digitalisation of the economy.

3. What is the OECD's Two-Pillar Solution?

While BEPS 1.0 successfully addressed many tax avoidance strategies and loopholes, it primarily focused on traditional MNEs and did not address gaps in resolving the tax challenges posed by the rapidly evolving digital economy. Also, because the implementation of BEPS 1.0 varied among countries, it resulted in inconsistent and fragmented approaches to tackling tax avoidance, allowing loopholes to persist across jurisdictions.

To overcome these shortcomings, BEPS 2.0 was developed to provide a more comprehensive and inclusive framework. It expands the scope to address the tax challenges of the digital economy, promotes international collaboration and coordination, and introduces measures to prevent base erosion and profit shifting more effectively.

BEPS 2.0 comprises a two-pillar solution to modernise international tax rules by addressing the tax challenges of the digital economy and ensuring a fair and sustainable global tax system. 142 countries representing more than 90% of global Gross Domestic Product (GDP) have come together to work on BEPS 2.0 measures. At present, 139 of 142 countries have endorsed the BEPS 2.0 proposals.

4. What is Pillar One?

Pillar One is a proposal to tax large MNEs in countries where they have a significant consumer presence, even if they lack a physical presence. The application of these rules is targeted towards MNEs with global sales exceeding 20 billion euros and profitability exceeding 10%. Under this framework, it is proposed that 25% of profits exceeding 10% of revenue would be reallocated to market jurisdictions where the MNE's users and customers are based.

Approximately 100 major and highly profitable companies worldwide are anticipated to be impacted by Pillar One. The currently proposed global turnover criteria of 20 billion euros or more is proposed to be reduced after seven years to include more MNE groups within the ambit of the Pillar One framework. The final framework for Pillar One is expected to be published by the end of 2023.

5. What is Pillar Two?

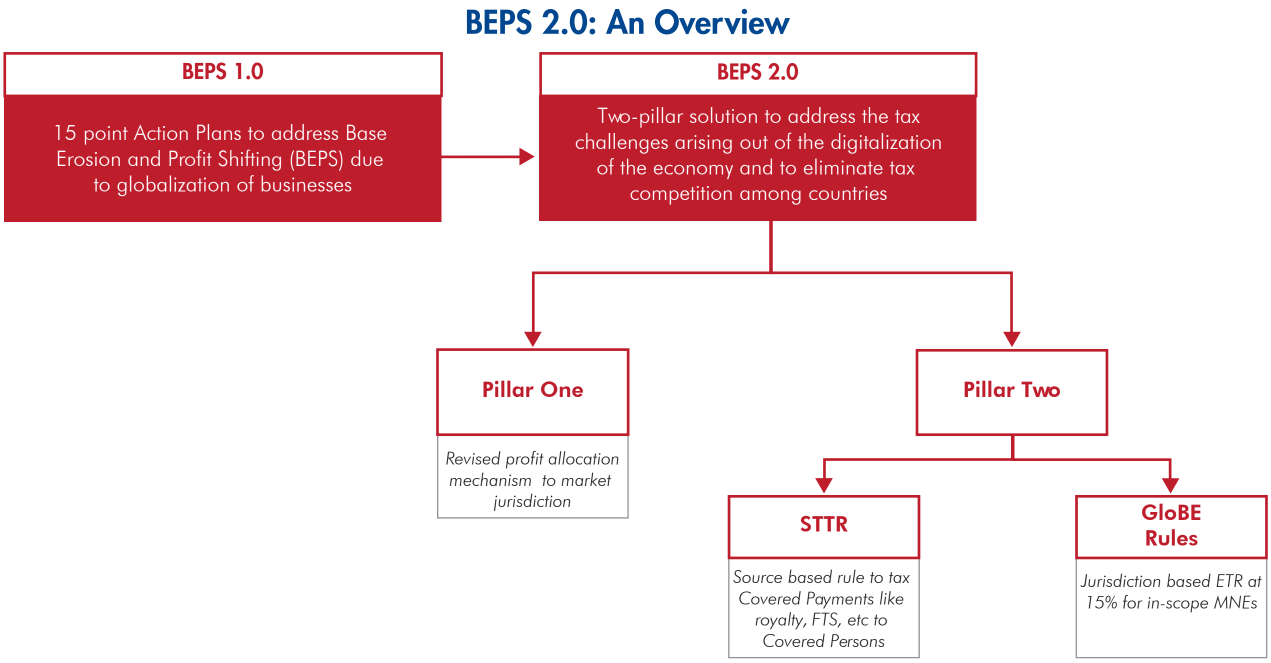
Pillar Two is a component of the OECD IF's two-pillar solution that introduces the Subject to Tax Rule (STTR) and the Global Anti-Base Erosion (GloBE) Rules to prevent profit shifting to low-tax jurisdictions.

6. What is the STTR?

The STTR functions as a source-based rule that grants the source jurisdiction the authority to apply withholding taxes or deny treaty benefits on specific intra-group cross-border payments, including interest, royalties, or fees. This is supposed to be triggered when the payment is subjected to a nominal rate of less than 9%. The STTR applies only to 'covered payments' made to 'connected persons'. OECD IF on 17 July, 2023 released the final rules for STTR.

7. What are the GloBE Rules?

GloBE Rules introduce a global minimum tax on large MNEs to discourage profit shifting and ensure that they pay a minimum 15% of tax in every jurisdiction where they operate. Furthermore, this also aims to reduce tax competition between jurisdictions thereby halting the 'race to bottom'. The GloBE Rules are meticulously crafted to ensure the effective collection of top-up taxes (TUT) through the operation of qualified domestic minimum top-up taxes (QDMTT), the income inclusion rule (IIR) and the UTPR (erstwhile known as undertaxed payments rule).



8. What is the order of application between Pillar One, the STTR and the GloBE Rules?

As per the OECD IF's commentary on model GloBE Rules, taxes paid under Pillar One would be recognised as a 'covered tax' under the GloBE Rules. Consequently, such taxes will be factored into the ETR of the Constituent Entity (CE) that takes the associated income in its GloBE Income.

The STTR comes into play after Pillar One taxes have been charged and allocated.

Finally, both Pillar One and STTR taxes are taken into the calculation of ETR for respective CEs for the purpose of GloBE Rules.

(Refer Sample Illustration on page 25 to understand the interplay between Pillar One, STTR and the GloBE Rules)

9. How are the GloBE Rules different from the Controlled Foreign Company (CFC) rules?

A CFC rule is a tax regulation designed to prevent individuals or businesses from using foreign companies they control to avoid paying taxes by shifting their profits to those low tax jurisdiction companies.

While the CFC rules and GloBE Rules share some similarities, there exist some critical differences between them such as in terms of control determination, scope determination, and the application of taxes.

CFC rules vary from the GloBE Rules in their scope and impact. CFC involves two steps: identifying whether a foreign entity qualifies as a CFC and attributing a portion of its income to its resident owners for taxation purposes. These rules often differentiate between different types of income.

On the other hand, the GloBE Rules do not focus on control identification. Instead, they determine the scope based on the CFS of the MNE group. Additionally, while CFC rules typically apply on a per-entity basis, the GloBE Rules impose a top-up tax on a jurisdiction-by-jurisdiction basis.

10. What is GILTI? How is it different from the GloBE Rules?

Global Intangible Low-Taxed Income (GILTI) is a US tax rule that specifically addresses income derived from intangible assets, such as patents and copyrights, that can be easily shifted to low-tax jurisdictions. It establishes a minimum tax rate of 10.5% and applies the tax on a worldwide basis, meaning it considers the total income earned by a company's foreign subsidiaries. Moreover, multinational companies can offset taxes paid in high-tax countries against low-tax profits elsewhere, allowing them to avoid being taxed twice on the same income. The current GILTI provisions aim for 10.5% of minimum effective tax rate which was proposed to be increased to 15.015% (in line with GloBE Rules) under the Build Back Better Act (BBBA).

A comparative analysis of GloBE Rules and GILTI is provided below:

Basis	GloBE Rules	GILTI (current)	GILTI *(proposed in BBBA)*
Tax Rate	15%	10.5%	15.015%
How tax is applied	Per Jurisdiction	Overall	Per Jurisdiction
Tax Base	Financial income	Taxable income	Taxable income
Substance based income exclusion	5% of tangible assets and 5% of payroll cost	10% of tangible assets	5% of tangible assets
Losses	15% of losses carried forward as future credits	No loss carry forward	One-year loss carry forward
Excluded industries	International shipping income	International shipping income and foreign oil and gas extraction income	International shipping income

Source: Congressional Research Service

FAQs - SCOPE & APPLICABILITY

11. Whom do the GloBE Rules apply to?

The GloBE Rules apply to MNEs with annual consolidated revenue of at least 750 million euros in at least two out of the four years preceding the year tested.[2]

An MNE group means any group that is consolidated for financial accounting purposes and that includes at least one Entity or Permanent Establishment (PE) that is not located in the jurisdiction of the Ultimate Parent Entity (UPE).[3]

As per 2018 CbCR data,[4] around 7,000 MNEs worldwide will be subject to the global minimum tax.

Rebasing Monetary Thresholds

Threshold of 750 million euros for non-Euro denominated CFS to be rebased annually, based on the average foreign exchange rate for the month of December as quoted by the ECB and apply as under -

Rebasing Monetary Thresholds

FY 2020-21 Fiscal Year	the average exchange rate for month of December 2019
FY 2021-22 Fiscal Year	the average exchange rate for month of December 2020
FY 2022-23 Fiscal Year	the average exchange rate for month of December 2021
FY 2023-24 Fiscal Year	the average exchange rate for month of December 2022

12. Do GloBE Rules apply to associates?

No. Since associates are accounted for generally under the equity method of accounting and are not consolidated on a 'line-by-line' basis for financial accounting purposes, associates are not considered as CE for GloBE purposes. Thus, there is no requirement for an MNE group to compute ETR/TUT for an associate entity.

13. Do GloBE Rules apply to Joint Ventures (JVs)?

JVs are typically excluded from GloBE Rules because they are accounted for under the equity method of accounting and are not consolidated on a 'line-by-line' basis.

However, GloBE Rules incorporate a special regime that requires MNEs to determine the TUT for qualifying JVs. A qualifying JV is defined as an entity whose financial results are reported using the equity method in the CFS of the UPE, provided that the UPE holds a direct or indirect ownership interest of at least 50% in the JV.

Under the GloBE Rules, both the ETR and the TUT for the JV must be calculated as if the JV and its subsidiaries were a separate MNE, with the JV-entity acting as the UPE. The top-up tax applicable to the JV is then allocated to the entity that holds a qualifying interest in the JV and is typically levied in accordance with the regular IIR and UTPR mechanisms.

14. Is the revenue threshold of 750 million euros adjusted for interest owned by minority shareholders?

No. The consolidated revenue reflected in the CFS should not be reduced by the amount attributable to minority interest holders.

15. When do the GloBE Rules apply in the case of a newly formed Group?

In the case of a newly formed group, since no CFS is available for the prior years, then the third year can be the first year in which the GloBE Rules can apply (assuming revenue in each of the first two years exceeds the threshold of 750 million euros).

16. How is the revenue threshold of 750 million euros applied for a period other than 12 months?

If one or more of the fiscal years of the MNE group considered for purposes of scope is of a period other than 12 months, for each of those fiscal years the 750 million euros threshold is adjusted proportionally to correspond with the length of the relevant fiscal year.

2. As per Article 1.1.1 of model GloBE Rules
3. As per Article 1.2 of the model GloBE Rules
4. Source: OECD's Corporate Tax Statistics (Fourth Edition)

17. Will a standalone entity having a PE in a foreign jurisdiction qualify as an MNE Group?

PEs are treated as separate entities for the purpose of GloBE Rules. Thus, a group with a PE located in a foreign jurisdiction that is not part of another group will be treated as an MNE for GloBE purposes.

18. An MNE Group is ultimately owned by an individual. Will the individual be treated as the UPE?

Model GloBE Rules define "Entity" to mean any legal person (other than a natural person) or an arrangement that prepares separate financial accounts. Accordingly, individuals are not covered by the GloBE Rules and the UPE would be the next entity in the ownership chain under the individual.

19. How is the applicability of the GloBE Rules determined in the case of mergers and demergers?

To determine the applicability of the GloBE Rules in the case of mergers of two or more groups, one needs to determine if the sum of revenue of the groups together crosses the threshold of 750 million euros in at least two of the four years prior to the year of merger.

Revenue threshold is deemed to be met by a demerged group as follows:

- For the first fiscal year ending after the demerger: if separate groups have annual revenues of 750 million euros or more in that year.
- For the second to fourth fiscal year ending after the demerger: if separate groups have annual revenues of 750 million euros or more in at least two of the fiscal years following the year of demerger.

20. Do the GloBE Rules apply to all CEs of the Group or are there any excluded entities?

GloBE Rules do not apply to governmental entities, international organisations, non-profit organisations, and pension funds.[5] Furthermore, these Rules also do not apply to investment funds and real estate investment vehicles that are the UPE of an MNE group.

Additionally, certain specified kinds of entities that are owned by the above excluded entities are also excluded from the GloBE Rules.

A de minimis exclusion excludes those jurisdictions from compliance where the MNE group has average revenue < 10 million euros and average GloBE Income < 1 million euros in the current and preceding two years.

MNE groups in the initial phase of an international activity will be excluded from the application of UTPR for five years if it has CEs in no more than six jurisdictions and total net book value of all tangible assets of the MNE group ≤50 million euros.

21. Are any industries excluded from the GloBE Rules?

For an MNE group that has International Shipping Income, each CE's International Shipping Income and Qualified Ancillary International Shipping Income shall be excluded from the computation of its GloBE Income or Loss for the jurisdiction in which it is located.[6]

To qualify for the exclusion, the Constituent Entity must demonstrate that the strategic or commercial management of all ships concerned is effectively carried on from within the jurisdiction where the CE is located.

5. As per Article 1.5 of model GloBE Rules
6. As per Article 3.3 of model GloBE Rules

FAQs - COMPUTATION & COMPLIANCE

22. How do the GloBE Rules operate?

The GloBE Rules operate sequentially as follows on a jurisdiction-by-jurisdiction basis:

1. **Calculation of GloBE income/loss for each jurisdiction**
Start with financial accounting net income / loss (FANIL) taken from the 'fit-for-consolidation' financial statements (before intra-group eliminations) and make adjustments in accordance with GloBE Rules.

2. **Calculation of adjusted covered taxes for each jurisdiction**
Covered taxes include both current as well as certain deferred taxes accrued in the financial accounts.

3. **Calculation of jurisdictional ETR**
ETR is arrived at by simply dividing adjusted covered taxes by GloBE income/loss.

4. **Determining the TUT percentage**
This refers to the positive percentage point difference between the minimum ETR (i.e., 15%) and the ETR computed in Step 3 above.

5. **Determining excess profit**
This is arrived at by subtracting the substance-based income carve-outs from the GloBE Income.

6. **Calculating the jurisdictional TUT liability**
TUT liability = (TUT % * Excess Profit) + additional current TUT – QDMTT

23. What computational adjustments are required for arriving at GloBE Income/Loss (as per Step 1 above)?

Calculation of GloBE income/loss is governed by Article 3 of the model GloBE Rules and comprises the following broad adjustments to FANIL:

- Nine adjustments as per Art. 3.2.1 and One adjustment as per Administrative Guidance 2.4.
- Ten adjustments as per Art. 3.2.2 to 3.2.11.
- Exclusion of shipping income and allocation of income of PEs and flow-through entities.

The broad theme of these adjustments is to mainly align the financial accounting income with tax income so that the ETR arrived at reflects consistency and meaningfulness.

24. What computational adjustments are required for arriving at adjusted covered taxes (as per Step 2 above)?

Calculation of adjusted covered taxes is governed by Article 4 of the model GloBE Rules and comprises the following broad adjustments to current tax expenses recorded in financial statements:

- Four additions as per Art. 4.1.2.
- Five reductions as per Art. 4.1.3.
- Allocation of covered taxes from one CE to another as per Art. 4.3.
- Net deferred tax adjustment as per Art. 4.4.
- GloBE Loss Election for GloBE Loss Deferred Tax Asset under Art. 4.5.
- Adjustments for post filing adjustments & tax rate changes under Art. 4.6.

The broad theme of these adjustments is to only take those taxes into ETR computation which pertain to income included in GloBE computation so that meaningful comparison can be made.

25. What is meant by jurisdictional ETR?

Jurisdictional ETR refers to an ETR calculation for each jurisdiction where an MNE operates (except jurisdictions which are eliminated because of de minimis exclusion). This is done by aggregating the adjusted covered taxes of all CEs in a jurisdiction and dividing it by the aggregate GloBE Income of all CEs in that jurisdiction.

There are, however, a few exceptions to the jurisdictional ETR. For the following entities, separate ETR is calculated:

- Each Stateless CE
- Investment entities and insurance investment entities

- Minority-owned CEs (MOCEs)
- JVs and JV subsidiaries, which are together considered as separate JV MNEs

26. What is meant by substance-based income exclusion?

The substance-based income exclusion (SBIE) in the GloBE Rules refers to a provision that excludes a predetermined portion of a group's income from being included in the calculation of TUT. This exclusion applies at a specific carve-out percentage to tangible assets and payroll costs in a specific jurisdiction and aims to acknowledge that income generated from these physical factors is unlikely to result from profit shifting.

The carve-out percentages are as follows:[7]

FY beginning in	Payroll	Asset
2023	10.00%	8.00%
2024	9.80%	7.80%
2025	9.60%	7.60%
2026	9.40%	7.40%
2027	9.20%	7.20%
2028	9.00%	7.00%
2029	8.20%	6.60%
2030	7.40%	6.20%
2031	6.60%	5.80%
2032	5.80%	5.40%
2033 onwards	5.00%	5.00%

27. How are top-up taxes collected under the GloBE Rules?

TUT are collected through the operation of three rules – QDMTT, IIR and UTPR. QDMTT applies in priority to both the IIR and UTPR.

QDMTT is imposed and collected by the jurisdiction where there exists a shortfall of tax from the minimum rate of 15%. It reduces the amount of TUT liability (as shown in step 6 of the answer to question 17).

The remaining TUT that is left uncollected (if any) under QDMTT is collected through the operation of two inter-locking rules – IIR and UTPR. IIR applies in priority to UTPR with the latter acting as a backstop rule to prevent any tax leakages.

28. How will the IIR work in practice?

Under the IIR, TUT are collected by the jurisdiction of the UPE from the UPE. The TUT is collected in proportion to the ownership interest of the parent entity in the low-taxed CE (LTCE).

Furthermore, IIR follows a top-down approach, i.e., it is first applied at the UPE level and then flows down along the ownership chain. In other words, if a UPE is not subject to IIR, then the next intermediate parent entity will pay the TUT associated with the LTCE.

The only exception to this is in the case of a Partially Owned Parent Entity (POPE).

29. What is a POPE?

In simple terms, a POPE is a CE (other than UPE) of an MNE group that owns an ownership interest in another CE of the MNE group and has more than 20% of its profits owned (directly/indirectly) by individuals/entities outside the MNE group.

When a POPE exists in the ownership chain of an LTCE, its jurisdiction has the primary right to tax, even before the UPE jurisdiction, and the parent entities above it will adjust their share of additional taxes based on what the POPE pays.

If a POPE has control over another entity, it is also considered a POPE. If the lower POPE is a 100% subsidiary of the higher POPE, the higher POPE's jurisdiction enjoys the taxing rights. Otherwise, the lower POPE's jurisdiction has the main taxing right, and credits are given to the higher POPE's jurisdiction based on their respective ownership shares.

30. How will the UTPR work in practice?

The UTPR operates as a backstop to the IIR and ensures that if any TUT is left unallocated under the IIR, then it is allocated among the jurisdictions of remaining CEs and collected by them.

The UTPR is applied either through a 'denial of deduction' or through any other equivalent adjustment.

It is important to understand that the adjustment made under the UTPR should result in an increase in the tax amount payable in the current year. Therefore, disallowing the carry forward of tax losses would not be considered an appropriate

7. As per Article 9.2 of model GloBE Rules

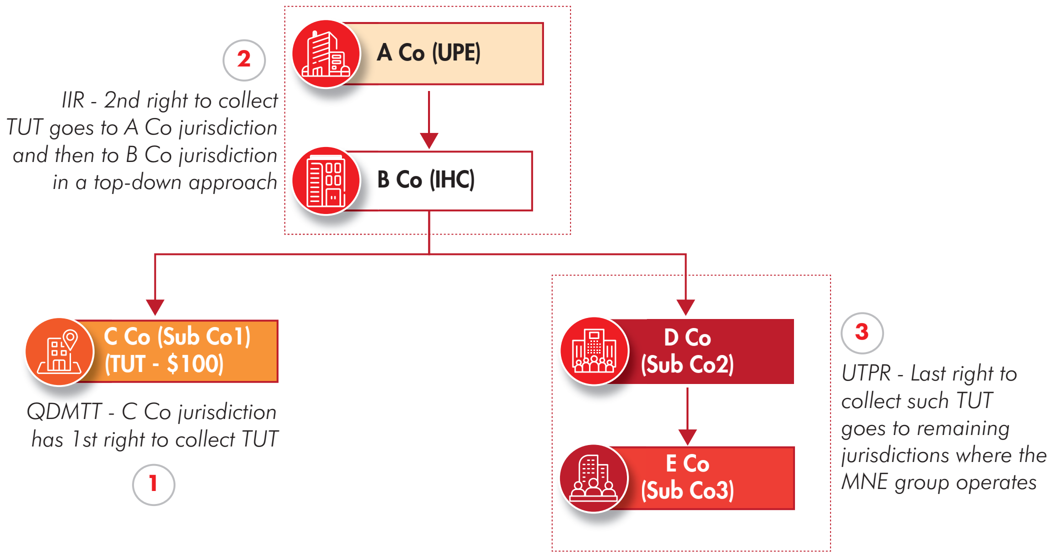
UTPR adjustment. This also means that there shall be no further allocation of UTPR TUT to a jurisdiction if the prior year's allocated UTPR TUT has not been fully brought to tax.

Allocation of UTPR TUT to a jurisdiction is based on the two factors (both given equal weightage and aggregated):

a. proportion of employees in the jurisdiction vis-à-vis total employees in all UTPR jurisdictions.
b. proportion of value of tangible assets in the jurisdiction vis-à-vis total value of all tangible assets in all UTPR jurisdictions.

However, the allocation of UTPR TUT between CEs in a UTPR jurisdiction is left to the UTPR jurisdiction's domestic laws.

Top-up tax collection mechanism



31. Say an MNE group operates in two jurisdictions – A and B. The ETR in A is 25% while that in B is 5%. Can it set off the excess tax paid in A with the TUT in B?

No. The GloBE Rules do not take into consideration the ETR of the MNE group as a whole. They focus on jurisdictional ETR and thus inter-jurisdiction set-off of taxes is not allowed. Consequently, the MNE will have to pay 10% (minimum rate 15% minus ETR of 5%) TUT in jurisdiction B.

32. Can taxes paid in excess of 15% in a year be set off against any shortfall in the future year(s)?

No. The GloBE Rules do not allow set-off of excess taxes paid in a year with shortfalls (if any) that arise in later years.

33. What about MNEs which do not have any CE in a jurisdiction with headline tax rate of less than 15%?

The GloBE Rules have made it amply clear that headline tax rates of jurisdictions are indicative but not determinative in the computation of TUT. In other words, merely operating in countries with nominal tax rates above 15% does not guarantee immunity from exposure.

For example, if an entity of an MNE group is located in jurisdiction A where the headline tax rate is 25% but, owing to the nature of its operations, the entity qualifies for a 'tax holiday' scheme that exempts a certain portion of the entity's income or offers enhanced deduction. As a result of the scheme, the entity's tax burden is reduced. However, Article 3 of the model GloBE Rules discourages such preferential tax treatment of jurisdictions and reverses the impact of exemption/enhanced deduction, thereby resulting in a TUT liability.

34. Does an MNE group which has an ETR of more than 15% in every jurisdiction need to comply with GloBE Rules?

Yes. ETR is relevant for the purpose of computing TUT. However, even in the case where an MNE group has no TUT liability in any jurisdiction, it still needs to file the GloBE Information Return (GIR) and fulfil other administrative requirements of the GloBE Rules.

35. Can a top-up tax liability arise in a GloBE loss scenario?

Yes. The model GloBE Rules envisage a situation where a TUT liability may arise in a loss scenario. Article 4.1.5 provides a special rule that applies in limited circumstances when there is no Net GloBE Income in a jurisdiction for the FY and the CE has a deferred tax asset that has arisen due to a permanent difference. This fact pattern may occur when the local tax rules in the CE's jurisdiction grant a deduction from income that is in excess of the amount that would be allowed for financial accounting purposes and where that difference between GloBE and local tax rules will not reverse over time. An example could be a deduction that is in excess of economic cost (i.e., a super deduction). Accordingly, the local tax loss is greater than the amount of loss recognised for GloBE purposes. The approach taken under Article 4.1.5 is to tax the excess benefit resulting from the permanent difference in the year it is created at the Minimum Rate of 15%.

36. Do the GloBE Rules provide for any safe harbours?

Yes, the GloBE Rules provide for following safe harbours:

- Transitional CbCR Safe Harbour
- Permanent Safe Harbour
- QDMTT Safe Harbour
- Transitional UTPR Safe Harbour

37. What is Transitional CbCR Safe Harbour?

Transitional CbCR Safe Harbour is valid only during the transitional period, i.e., for fiscal years beginning before 31 December 2026 and not ending after 30 June 2028.

A jurisdiction qualifies for transitional safe harbour when any one of the following tests is met:

- **De minimis test** –
  - Revenue as per Qualified CbCR < 10 million euros, and
  - Profit before tax (PBT) as per Qualified CbCR < 1 million euros
- **Simplified ETR test** – ETR for fiscal years beginning in following years should be equal to or more than respective amounts as follows –
  - 2024⟶15%
  - 2025⟶16%
  - 2026⟶17%

Here, ETR is calculated by dividing covered taxes (as per Qualified FS) with the PBT (as per Qualified CbCR).

- **Routine profits test** – This test is satisfied when PBT (as per Qualified CbCR) is equal to or less than SBIE (as per GloBE Rules).

Transitional safe harbour operates on a 'once out, always out' approach, i.e., if a jurisdiction does not qualify for it in a year, then it cannot qualify for it in subsequent years.

[Qualified CbCR refers to CbCR prepared using Qualified financial statements.]

38. What is Permanent Safe Harbour?

Permanent Safe Harbour is enshrined in Article 8 of the model GloBE Rules and is available to a jurisdiction as an annual election, i.e., an MNE group may choose to opt for permanent safe harbour in a year even if it had not opted for the same in any previous year.

The Simplified Calculation framework for permanent safe harbour is not yet notified but it will be based on meeting any of the following three tests:

- **De minimis test** –
  - Average Revenue as per 'Simplified Calculation framework' < 10 million euros, and
  - Average GloBE Income as per 'Simplified Calculation framework' < 1 million euros
- **Simplified ETR test** – ETR for a jurisdiction is atleast 15%. Here, ETR is calculated by dividing covered taxes with the PBT (both taken as per 'Simplified Calculation framework').
- **Routine profits test** – This test is satisfied when PBT (as per 'Simplified Calculation framework') is equal to or less than SBIE (as per GloBE Rules).

Data Sources for reliefs from GloBE Rules

Particulars	Transitional Safe Harbour	Permanent Safe Harbour	Article 5.5 of GloBE Rules *(De minimis Exclusion)*
De minimis Test			
Revenue	Qualified CbCR	Simplified Calculations^	GloBE Rules
Income	Qualified CbCR	Simplified Calculations^	GloBE Rules
ETR Test			
Covered Taxes	Financial Statements	Simplified Calculations^	NA
Income	Qualified CbCR	Simplified Calculations^	NA
Routine Profits Test			
Income	Qualified CbCR	Simplified Calculations^	NA
SBIE	GloBE Rules	GloBE Rules	NA

^ *Simplified Calculation framework yet to be provided*

39. What is QDMTT Safe Harbour?

Where an MNE Group qualifies for a QDMTT Safe Harbour, the Top-up Tax payable under the GloBE Rules is deemed to be nil, rather than the QDMTT payable being a credit. A QDMTT that qualifies for a safe harbour must meet all of the following standards:

a. **The QDMTT Accounting Standard** – It requires a QDMTT to be computed based on the UPE's financial accounting standard or a local financial accounting standard subject to certain conditions.

b. **The Consistency Standard** - It requires the QDMTT computations to be the same as the computations required under the GloBE Rules except where the Commentary explicitly requires a QDMTT to depart from the GloBE Rules or where the Inclusive Framework decides that an optional variation that departs from the GloBE Rules still meets the standard.

c. **The Administration Standard** - It requires the QDMTT jurisdiction to meet the requirements of an on-going monitoring process similar to the one applicable to jurisdictions implementing the GloBE Rules.

Whether a QDMTT meets these standards would be determined by the Inclusive Framework as part of the peer review process of the QDMTT.

40. What is a Transitional UTPR Safe Harbour?

The UTPR is designed to operate as a backstop to the IIR by encouraging jurisdictions to adopt the GloBE Rules and MNE Groups to structure their holdings in a way that brings their operations within the charge of the IIR. However, the operation of the rule order under the GloBE Rules means that the UTPR would effectively operate as the primary mechanism for imposing top-up tax on the low taxed profits in the UPE jurisdiction where that jurisdiction has not introduced a QDMTT.

The Transitional UTPR Safe Harbour is designed to provide transitional relief in the UPE jurisdiction during the first years in which the GloBE Rules come into effect. Under the Transitional UTPR Safe Harbour, the UTPR Top-up Tax Amount calculated for the UPE jurisdiction shall be deemed to be zero if the UPE jurisdiction has a corporate income tax with a rate of at least 20%.

The Transitional UTPR Safe Harbour applies for fiscal years that run no longer than 12 months and that begin on or before 31 December 2025 and end before 31 December 2026.

Where an MNE Group qualifies for both the Transitional CbCR Safe Harbour and Transitional UTPR Safe Harbour in a jurisdiction in a fiscal year, the Group may elect to apply the former to avoid losing the benefit of the Transitional CbCR Safe Harbour in a subsequent fiscal year under the "once out, always out" approach.

41. What are the filing requirements?

The GloBE Rules require in-scope MNEs to file a GIR for each fiscal year within 15 months of the end of the fiscal year.

However, for the first reporting fiscal year, relaxation has been granted and the timeline has been extended by three months, i.e., instead of 15 months, an MNE group needs to submit a GIR within 18 months from the end of the fiscal year. If the first reporting fiscal year for an MNE group is January 2024 to December 2024, then the GIR needs to be filed within 30 June 2026.

42. What information is required to be submitted in the GIR?

The final GIR template issued by the OECD IF on 17th July 2023 is a 27-page template broken into the following categories.

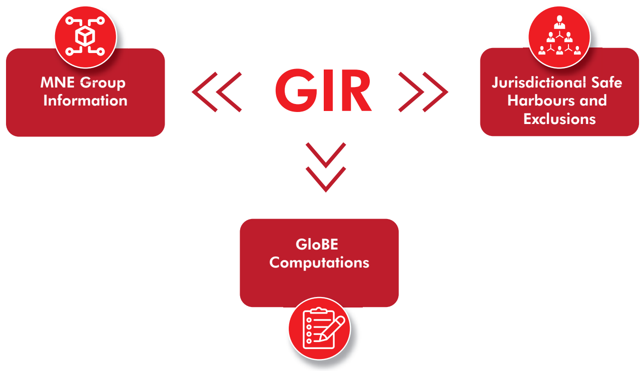
a. **MNE Group Information:**
   - Contains General information about the MNE group and the Filing CE.
   - Information about the corporate structure of the MNE group ⟶
     - each CE's ownership structure,
     - whether it is required to apply the IIR and whether the UTPR could apply with respect to such CE,
     - information about changes to the ownership structure during the fiscal year.

b. **Jurisdictional Safe Harbours and Exclusions** The Filing CE shall complete this section on a jurisdictional basis, for each jurisdiction where exceptions to the GloBE computation apply.

c. **GloBE Computations**: The Filing CE shall complete this section on a jurisdictional basis, for each jurisdiction (or subgroup, where relevant) where exceptions to the GloBE computation do not apply. It comprises of ⟶
   - Detailed computation of GloBE income/ loss for each jurisdiction
   - Detailed computation of adjusted covered taxes for each jurisdiction
   - Computation of jurisdictional ETR
   - Calculation of SBIE
   - Calculation of TUT liability
   - TUT allocation and attribution

Furthermore, the OECD IF has issued a transitional simplified jurisdictional reporting framework, as per which, during the transitional period, MNE Groups can elect a simplified jurisdictional reporting framework for jurisdictions for which no Top-up Tax liability arises or for which Top-up Tax liability arises but does not need to be allocated on a Constituent Entity basis. This allows an MNE Group to provide GloBE information at a jurisdictional level, rather than on a Constituent Entity basis.

Components of GIR



43. Do all entities of the MNE group need to file the GIR?

Article 8.1 of the model GloBE Rules requires each CE to file a GIR with the tax administration of the jurisdiction where it is located.

However, a CE shall not have the obligation to file such GIR if:

- A GIR has been filed by the UPE in the UPE jurisdiction and there exists a Qualifying Competent Authority Agreement between the UPE's jurisdiction and the jurisdiction of the CE, or
- A GIR has been filed by a Designated Filing Entity located in a jurisdiction that has a Qualifying Competent Authority Agreement with the jurisdiction of the CE.

44. Are there any compliance tools available? Do MNEs require the assistance of tools to assist in compliance with the GloBE Rules?

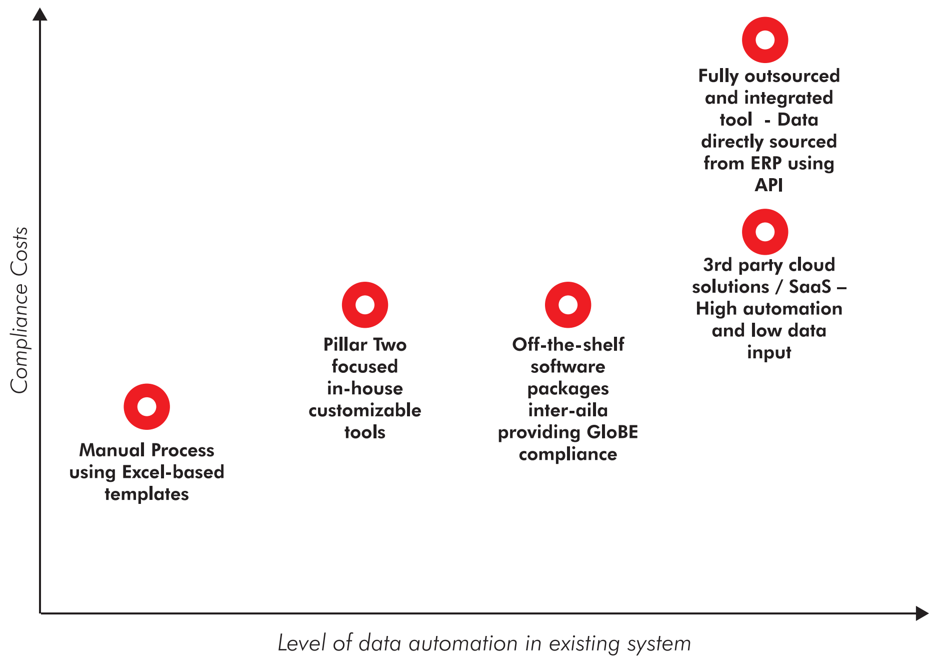
A few tools are being developed by software companies[8] across the world to aid in compliance with the GloBE Rules.

The decision of whether MNEs need a tool for compliance, or it can be done through excel sheets depends on various factors, most significant of them being the compliance cost and level of data automation in the existing system.

Like, in developing countries the level of data automation in the system is low to moderate and the availability of skilled workforce is adequate. Thus, in those countries adopting tool for GloBE Rules compliance may not be optimum option for the MNEs.

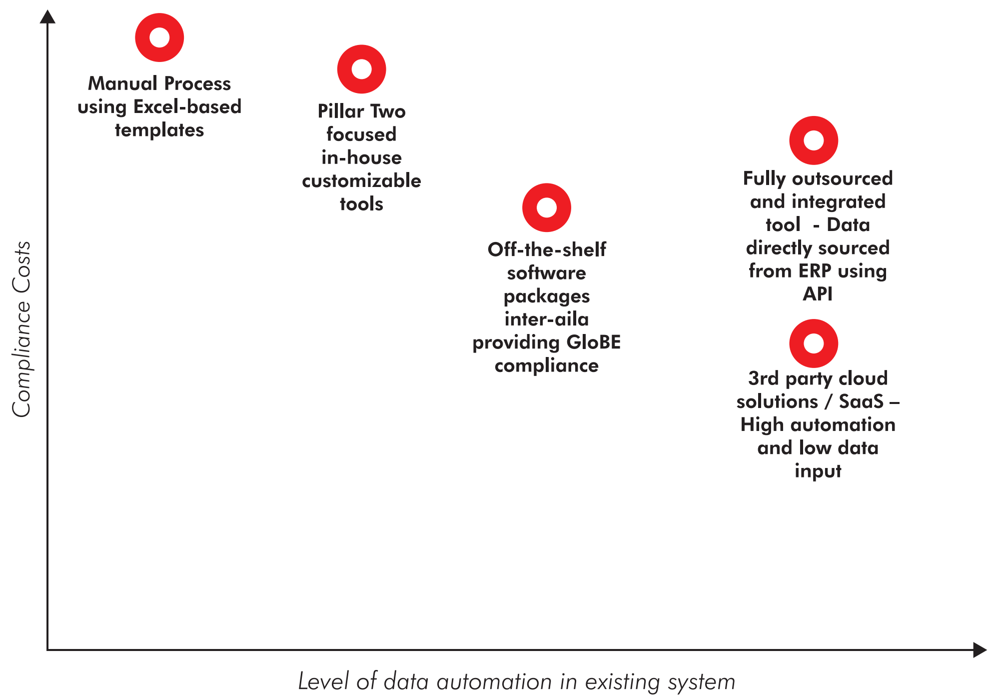
8. Namely, OECD Pillars, CSC Corp Tax, Wolters Kluwer, DaTaxan, Orbitax, Tax Model, Blika, Insightsoftware, Algonomia and some others.

Cost-automation matrix - Developing countries



On the contrary, in developed countries the level of data automation in the system is high and the availability of skilled workforce is expensive. Thus, in those countries adopting tool for GloBE Rules compliance may be an optimum option for the MNEs.

Cost-automation matrix - Developed countries

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FAQs - IMPLEMENTATION STATUS

45. What is the legislative status of the GloBE Rules across the world?

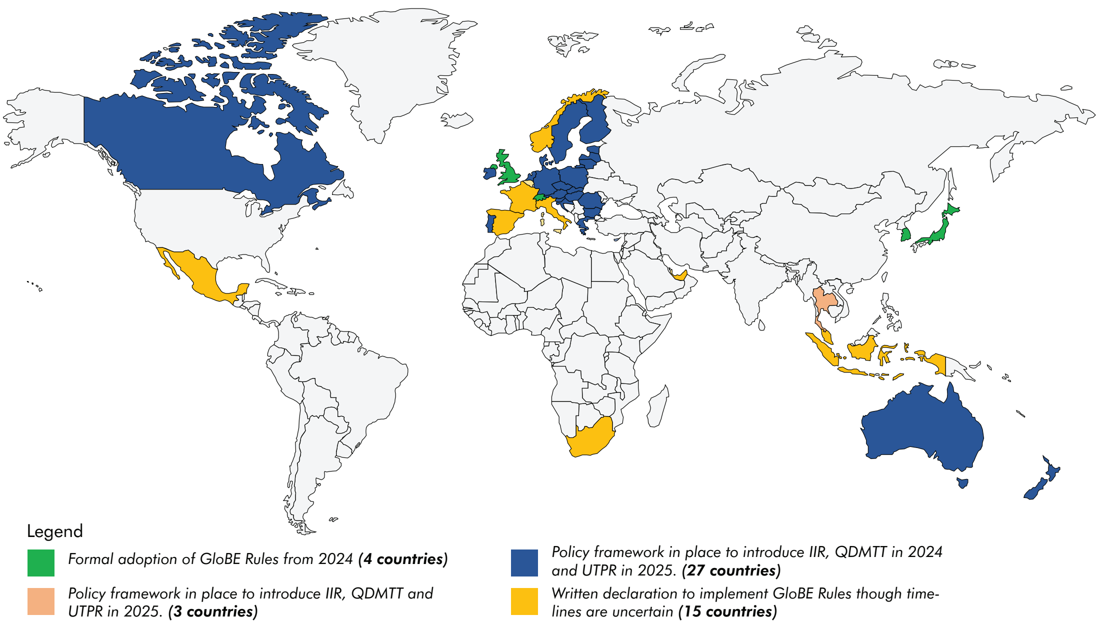
142 countries around the world (including India) have formed an IF, and all except Pakistan, Sri Lanka, and Nigeria (i.e., 139 countries) have come together to endorse the BEPS 2.0 proposals. The OECD IF issued a Report on the Pillar Two Blueprint in October 2020 outlining the potential financial impacts of the global minimum tax and has since come up with seven more documents on the Pillar Two GloBE Rules, two of which are in public consultation while the other five are final documents. These documents contain extensive literature on legislative provisions, commentary to rules, examples, safe harbour rules, GIR template, tax certainty procedures, and administrative guidance.

The OECD IF has come up with the following documents on Pillar Two:

Sl	Name	Status
1	Report on Pillar One and Pillar Two Blueprint (Oct'2020)	Final
2	Model GloBE Rules (Dec'2021)	Final
3	Commentary and Examples to GloBE Rules (Mar'2022)	Final
4	Safe Harbour Rules (Dec'2022)	Final
5	Tax Certainty (Dec'2022)	Public consultation document
6	Administrative Guidance (Feb'2023)	Final
7	GloBE Information Return document (July'2023)	Final
8	Administrative Guidance (July'2023)	Final

The adoption of the GloBE Rules is led by the European Union (EU). Despite some initial roadblocks from Hungary and Poland, the Council of the EU unanimously adopted the EU Minimum Tax Directive in December 2022. This Directive ensures that the GloBE Rules are implemented in a coordinated manner throughout the EU from 2024. Among the EU countries, the Netherlands, Sweden, and Germany have made significant progress in their adoption of the Directive to introduce GloBE Rules from 2024. A number of other leading economies, namely Japan (2024), South Korea (2024), Switzerland (2024), and UK (2024) have adopted the legislation with Australia (2024), New Zealand (2024) and Singapore (2025) having issued draft legislation, while other economies, namely Mexico, Canada, Mauritius, and Malaysia, have formally indicated they will introduce the GloBE Rules.

GloBE Rules legislative status



46. Is it mandatory for a jurisdiction to adopt the GloBE Rules? What if the jurisdiction of the UPE does not adopt the Rules?

It is not necessary for each IF jurisdiction to adopt the GloBE Rules to trigger a compliance obligation for the MNEs. The GloBE Rules have been framed and agreed to be applied as a 'common approach'. This means that jurisdictions are not required to formerly adopt the GloBE Rules, but, if they choose to do so, they agree to implement and administer them in a way that is consistent with the agreed outcomes set out under those rules.

Even if the jurisdiction of the UPE does not implement the rules, agreement on a common approach means that the UPE jurisdiction accepts the application of the GloBE Rules in respect of MNEs operating in its jurisdiction.

Say an MNE group is headquartered in Jurisdiction A, which has not yet adopted the GloBE Rules, but it has presence in Jurisdiction B where the GloBE Rules have been implemented. In this case, by virtue of the 'common approach' agreed by IF member countries, the MNE group needs to comply with the Rules.

47. Where does US stand in terms of implementing Pillar Two-GloBE Rules?

US is also one of the 139 IF members which has endorsed BEPS 2.0 proposals. However, the US has certain issues with some aspects of the GloBE Rules.

The US currently has GILTI Rules in place. These rules impose an additional tax on the foreign activities of US-based companies. During the Trump administration, the US argued that GILTI should be seen as equivalent to the GloBE Rules, suggesting that no changes to their approach were necessary.

However, under the Biden administration, various proposals have been put forward to align the US tax system with the Pillar Two proposals. These include revisions to the GILTI in the BBBA and the proposed replacement of the Base Erosion and Anti-Abuse Tax (BEAT) with the UTPR in the FY2023 budget proposals. The proposed revisions to GILTI in the BBBA aimed to bring it closer to the GLoBE Rules, including a similar tax rate and a per-country application. However, these changes were not included in the final version of the Inflation Reduction Act. The act introduced an alternative minimum tax based on adjusted financial statement income, but it remains unclear how this tax would interact with the GLoBE Rules.

48. What happens to the accumulated losses of an MNE group as at the start of the GloBE Rules implementation?

The GloBE Rules provide an irrevocable election to an MNE group at the time of filing the first GIR to opt for 'GloBE loss election'. This election is to be made jurisdiction-wise, i.e., an MNE may choose to make this election in Jurisdiction A but not in jurisdiction B.

Once an election is made, a GloBE loss deferred tax asset (GLDTA) is created for the GloBE loss in a jurisdiction at the minimum rate of 15%.

The GLDTA must be used in any subsequent fiscal year in which there is Net GloBE Income for the jurisdiction. GLDTA is carried forward to subsequent fiscal years reduced by the amount of GLDTA used in a fiscal year.

49. Assuming the first reporting year to start on or after January 2024, do MNE groups need to make any disclosure in periods before 2024?

While the model GloBE Rules do not require MNEs to make any disclosures in financial statements/annual reports in the pre-GloBE period, the International Accounting Standards Board (IASB) in May 2023 issued an Amendment to International Accounting Standard (IAS) 12 'Income Taxes', introducing the following:

- A mandatory temporary exception to account for deferred taxes arising from implementation of the Pillar Two model rules. The entity needs to disclose that it has applied the above exception.
- Targeted disclosure requirements.

Targeted disclosure requirements include the following:

- In periods when the Pillar Two legislation is effective, an entity is required to separately disclose its current income tax expense related to Pillar Two income taxes.

- In periods where the legislation is substantively enacted but not effective, an entity is required to disclose qualitative and quantitative information about known or reasonably estimable information to enable understanding of the entity's exposure arising from Pillar Two income taxes.
- While the exception to account for deferred taxes can be applied by MNE groups immediately, the disclosure requirements apply to annual reporting periods beginning on or after 1 January 2023.

50. Has India adopted the GloBE Rules?

No, India has not yet adopted the GloBE Rules. However, India is one of the 139 IF countries who have agreed to the BEPS 2.0 proposals and signed up to the 'common approach' of implementing them.

By virtue of this, even if India does not adopt the GloBE Rules in its domestic legislation, it must accept the application of the GloBE Rules by another jurisdiction in respect of MNEs headquartered in India. This implies that Indian headquartered MNEs having a presence in jurisdictions which have already adopted the GloBE Rules need to gear up and be prepared to comply with the legislative provisions of the rules.

51. How many Indian-headquartered MNEs are expected to be in-scope of the GloBE Rules?

As per the OECD's Corporate Tax Statistics (Fourth edition) based on 2018 CbCR data, around 151 Indian-headquartered MNEs qualify for GloBE Rules.

Furthermore, based on publicly available information for 2021-22 fiscal year, it is estimated that the number of in-scope Indian headquartered MNEs would be about 200.

52. How can MNEs prepare for the GloBE Rules?

The implementation of Pillar Two has raised significant concerns, particularly regarding the administrative and compliance burdens associated with the rules. The extensive amount of data required for calculations and strategic decision-making, including considerations like elections, poses a substantial challenge.

With about 50 countries having formally indicated adopting GloBE Rules, it is high time that the in-scope MNE Groups kickstart their campaigns for preparing themselves to comply with GloBE Rules. This would involve obtaining an understanding of the rules, the complicated calculations required and the filing requirements. The groups need to assess the data requirements and existing data sources to assess the data gaps, if any. Furthermore, it is of paramount importance that MNE groups deploy a dedicated team of experts from amongst their IT, accounts, legal and tax teams to develop a detailed understanding of the imminent GloBE Rules.

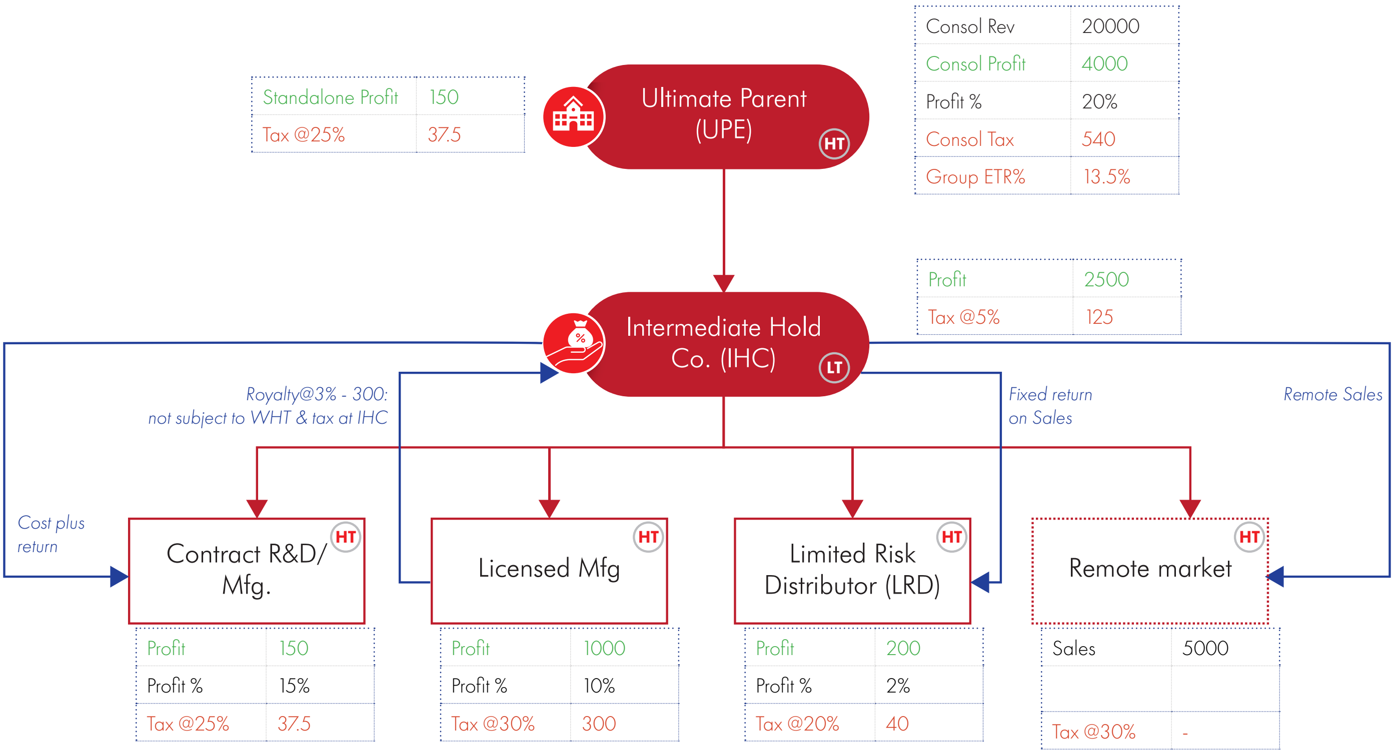
SAMPLE ILLUSTRATION

Illustration to understand the genesis and applicability of the two-pillar solution and the interplay between Pillar One and Pillar Two (i.e. STTR and GloBE Rules)

Let us take an example of a typical MNE group structure having its UPE in a high-tax (HT) jurisdiction. The MNE group has established an intermediate holding company (IHC) in a low-tax (LT) jurisdiction where all profits are concentrated with the help of below listed inter-company licensing and service arrangements (also depicted in the picture below):

- Contract R&D service arrangement with R&D center of the Group, thereby limiting the center's return to cost plus mark-up
- License manufacturing arrangement with one of the manufacturing entities of the Group against payment of royalty @3% which is eligible for patent box regime in the IHC jurisdiction and payment of royalties are not subject to withholding basis Double Tax Avoidance Agreement entered into between the jurisdictions
- Limited Risk Distributor arrangement with a group's reseller of products in different jurisdictions and capping the return accruing to the reseller at 3% of sales

The inter-company licensing and service arrangements are in compliance with the transfer pricing regulations. Also, no tax is imposed in the jurisdiction of remote market because existing tax framework requires physical nexus for obtaining taxing rights. In this way, mobility of functions, assets and risks to LT jurisdictions assists the MNE group in successful ETR optimisation with the overall group ETR being only 13.5%, inspite of majority of operations being undertaken in jurisdictions with headline tax rate of 20% or more.

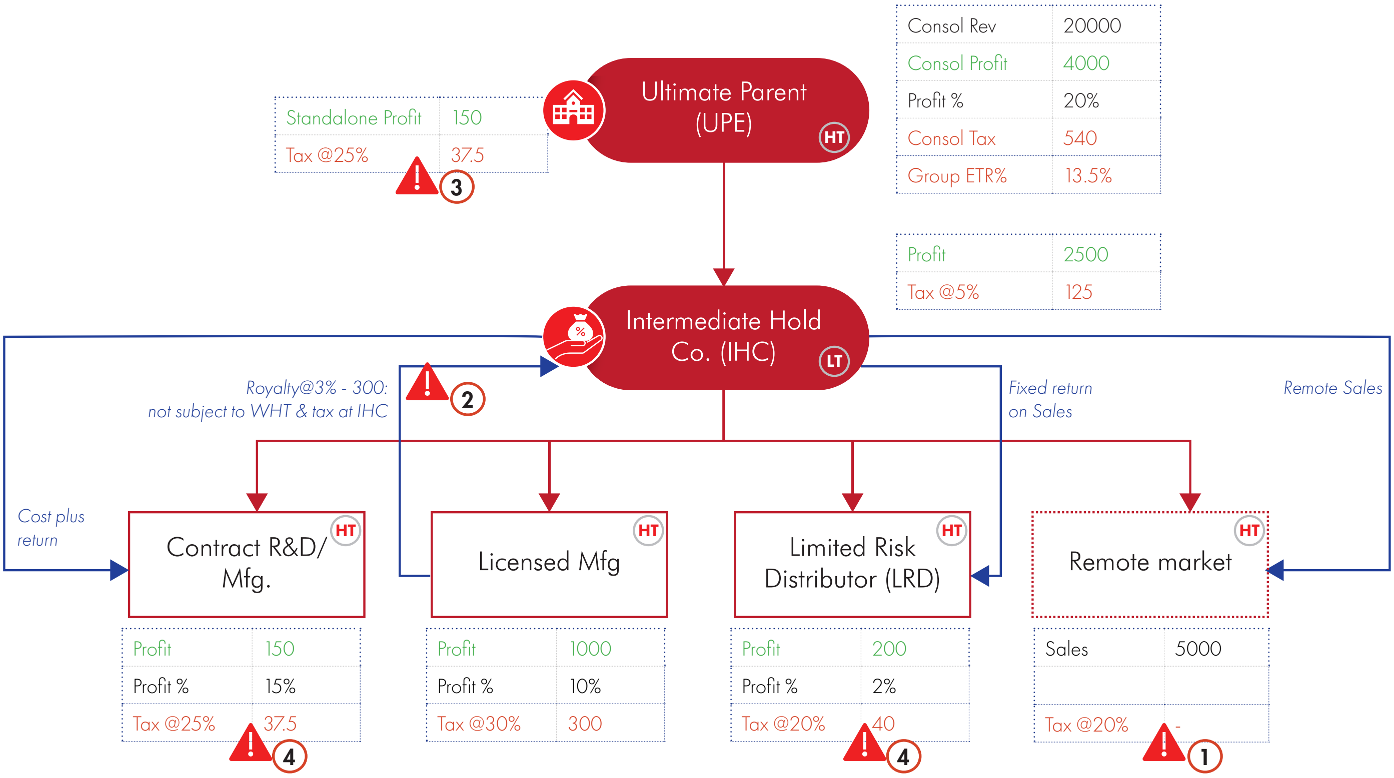


HT – High Tax Jurisdiction; LT – Low Tax Jurisdiction

- Taxing rights⟶**Physical nexus**
- **Separate Entity:** Transfer Pricing principles and arm's length approach
- Mobility of functions, assets & risks to low tax jurisdiction⟶**ETR Optimization**

(blue)	Remuneration model
(green)	Profits allocated
(red)	Taxes

The below picture highlights the concerns of the operating structure in the existing international tax framework.



Problem #	Jurisdiction affected	Concerns
1	Remote Market	Remote market contributes 25% of the MNE group's consolidated revenue. However, no taxes are attributed to the remote market jurisdiction.
2	Licensed manufacturing	IHC jurisdiction does not tax royalty pay-outs and also royalty pay-out is claimed as deduction in licensed manufacturing jurisdiction. In this way, there is double non-taxation.
3	UPE	MNEs use complex operating models (incl. transfer pricing arrangements) to shift profits from UPE jurisdiction to LT jurisdictions.
4	Contract R&D/ LRD	MNEs use complex operating models (incl. transfer pricing arrangements) to shift profits from jurisdictions of substance (mostly R&D centres) to LT jurisdictions.

In order to resolve the above concerns, the OECD has come up with BEPS 2.0 proposals comprising of a two-pillar solution –

- Pillar One: An add-on to existing Transfer Pricing system to re-allocate profits to market jurisdictions.
- Pillar Two: MNE Group subject to a minimum base rate of taxation in each jurisdiction.

Now, let us look at how the two-pillar solution would push the effective tax costs and ensure fairness in tax system. The below table represents the as-is scenario of the MNE group resulting in ETR of 13.50%

Particulars	UPE	IHC	Contract R&D	Licensed Mfg	LRD	Remote market	Consol.
Revenue* (a)				5,000	10,000	5,000	20,000
Profit (b)	150	2500	150	1000	200	-	4,000
Taxes	37.5	125	37.5	300	40	-	540
ETR							**13.50%**

For simplicity revenue of UPE, IHC and R&D entities have not been disclosed.

Application of Pillar One

Assuming Pillar One is adopted basis its current construct and is applicable on the MNE group. Under Pillar One, 25% of residual profits (i.e., actual profits of MNE minus 10% of consolidated revenue) is allocated to market jurisdictions (subject to safe harbour) in ratio of sales (i.e. 1:2:1 in our case). We have not considered inter-play of safe harbour rate in this illustration.

Residual Profits = Actual Profit (4,000) minus 10% of consolidated revenue (20,000 * 10% i.e., 2,000) is 2,000.

Amount A would be 25% of the residual profits to be allocated to market jurisdictions, which would be 25% of 2,000 i.e., 500.

Re-allocation of profits under Pillar One ⟶

Particulars	UPE	IHC	Contract R&D	Licensed Mfg	LRD	Remote market	Consol.
Revenue (a)				5,000	10,000	5,000	20,000
Profit (b)	150	2500	150	1000	200	-	4000
Taxes (c)	37.5	125	37.5	300	40	-	540
Pillar 1 Allocation (d)	-	-	-	125	250	125	
Tax Rate	25%	5%	20%	30%	20%	20%	-
Taxes on Pillar 1 (e)				37.5	50	25	
Re-allocated profit (b+d)	150	2500	150	1125	450	125	4000 (+500)
Total Taxes (c+e)	37.5	125	37.5	337.5	90	25	652.5
ETR							**16.31%**

^ *(c) to the extent (e) exceeds (b)*

The application of Pillar One has resulted in ETR increase of 281 bps to 16.31%. It is assumed that as per the Pillar One rules the IHC entity has the obligation to pay taxes on Amount A.

Application of Pillar Two - STTR

Assuming Pillar One is adopted basis its current construct and is applicable on the MNE group. Under the STTR Rule, royalty payment of 300 from licensed manufacturing jurisdiction to IHC will be subject to a tax of 9%. In the given case, since no tax is being levied on it, jurisdiction of license manufacturing would get the right to tax it @ 9% i.e., tax of 27.

Revised tax position after STTR is ⟶

Particulars	UPE	IHC	Contract R&D	Licensed Mfg	LRD	Remote market	Consol.
Revenue (a)				5,000	10,000	5,000	20,000
Profit (b)	150	2500	150	1000	200	-	4000
Taxes (c)	37.5	125	37.5	300	40		540
Pillar 1 Allocation (d)	-	-	-	125	250	125	
Tax Rate	25%	5%	20%	30%	20%	20%	-
Taxes on Pillar 1 (e)				37.5	50	25	
Source country taxes (f)				27			
Re-allocated profit (b+d)	150	2500	150	1125	450	125	4000 (+500)
Total Taxes (c+e+f)	37.5	125	37.5	364.5	90	25	652.5
							16.99%

The application of STTR has resulted in ETR increase of 68 bps to 16.99% .

Application of Pillar Two – GloBE Rules

Applying the principles of GloBE Rules, the MNE group needs to ensure that it pays a minimum of 15% tax rate in every jurisdiction where it operates.

The impact of GloBE Rules is demonstrated as follows ⟶

Particulars	UPE	IHC	Contract R&D	Licensed Mfg	LRD	Remote market	Consol.	
Revenue				5,000	10,000	5,000	20,000	
Profit (a)	150	2500	150	1000	200	-	4000	
Tax Rate (b)	25%	5%	20%	30%	20%	20%		
Taxes (c = a*b)	37.5	125	37.5	300	40		540	**13.50%**
Pillar 1 profit allocation (d)				125	250	125		
Taxes on Pillar 1				37.5	50	25		
Pillar 1 Tax allocation (e)		112.5		*Allocated for ETR computation*				
Total taxes after P1 (f =c+e)	37.5	237.5	37.5	300	40	-	652.5	**16.31%**
Source country Taxes				27				
STTR – Tax allocation (g)		27	*Allocated for ETR computation*					
Total taxes (h = f+g)	37.5	264.5	37.5	300	40	-	679.5	**16.99%**
Effective Tax Rate	25%	**10.58%**	25%	30%	20%	-	16.99%	
Minimum Tax Rate	15%	15%	15%	15%	15%	-		
Deficit (i)	-	4.42%	-	-	-	-		
Substance based income* (j)	-	100	-	-	-	-		
Excess Profits (k = a-j)	-	2400	-	-	-	-		
Top-up taxes (l = i*k)	-	106.1	-	-	-	-		
Top-up tax collection –IHC		106.1	-	-	-	-		
Total taxes	37.5	370.6	37.5	300	40		**785.6**	**19.64%**

^ ^Substance Based Income Exclusion assumed to be 100

Taxes paid by the MNE under application of Pillar One and STTR in LRD and remote market jurisdictions and licensed manufacturer's jurisdiction will be re-allocated IHC for purpose of GloBE Rules computation.

On the Tup-up Taxes of 106.1 units, the IHC jurisdiction will have the first right to collect under QDMTT, provided it has brought in the regulations. Where IHC jurisdiction doesn't legislate the GloBE Rules, the UPE jurisdiction shall have the right to collect the taxes under IIR, provided the jurisdiction has introduced the law. Where the UPE jurisdiction doesn't legislate the GloBE Rules, the other jurisdictions where the MNE is present shall have the right to collect the taxes under UTPR, provided the jurisdictions have legislated UTPR in their jurisdictions. Thus, even if one jurisdiction introduces the law, the tax implication under GloBE Rules is ascertained.

Thus, it can be seen that a 13.5% ETR for the MNE group is increased to 19.64% under a full-fledged application of Pillar One and Pillar Two.

Disclaimer:The illustration provided above is for explaining how the broad contours of Pillar One and Pillar Two proposals will come into play for an in-scope MNE group. While the technical rules for Pillar One are yet to be finalised, the illustration is based upon various simplified assumptions and should not be considered as legal, financial, or tax advice. The depicted scenarios are hypothetical and do not represent real-world situations or specific entities. Actual results may vary based on individual circumstances, and readers are advised to consult with qualified professionals for personalized advice on their particular tax position. The publisher and authors of this publication shall not be held liable for any reliance placed on the information presented in this illustration.

OUR PROPOSITION

At Dhruva, we are well placed and up to speed with the latest developments on the digital tax front and will be happy to partner with clients to help them navigate the new rules with simplicity and ease.

Pre-GloBE year

1. Help prepare an architecture (what is that MNE need to do) for Pillar Two-GloBE Rules implementation.
2. Assist in designing a roadmap (how to do it) to Pillar Two-GloBE Rules implementation.
3. Building templates for collating relevant finance, tax, legal and HR related data inputs to ensure compliance with Pillar Two-GloBE Rules.
4. Providing tax policy background to enable an understanding of the data requirements.
5. Interact with the finance, tax and IT team, gather their readiness to cope with data requirements.
6. Compare data available with data requirements and identify data gaps in the existing framework and help determine which data needs to be captured and collated additionally for Pillar Two-GloBE Rules implementation.
7. Prepare a handbook comprising explanations and illustrations provided in the GloBE Model Rules read with the Commentary and the Examples module as published by the OECD
8. Pillar Two-GloBE Rules impact analysis (dry-run) based on recent year's financial statements and identify potential mitigation measures based on the outcome of impact assessment.
9. Global ETR optimisation (including Tax Supply chain optimisation) and Jurisdictional ETR optimisation through elective options and other means provided in Pillar Two.
10. Updating of transfer pricing policy based on the outcome of Pillar Two.

GloBE year

1. Determination and identification of entities / permanent establishments within the scope of Pillar Two-GloBE Rules, their jurisdictions, and their role in assessing minimum taxation.
2. Determination of UPE / POPE / MOCE / JV entities/ groups which are in-scope for Pillar Two-GloBE Rules computation and filing requirements.
3. In-depth determination of different constituents under GloBE Rules such as, GloBE Income/ Loss, Adjusted Covered Taxes, Substance based income exclusion, ETR, Top-up tax liability etc. at a company / jurisdictional level for the first GloBE effective year, i.e., 2024.
4. Applicability of transitional and permanent safe harbour rules for different jurisdictions where the Group has a presence for the first GloBE effective year, i.e., 2024.
5. Assistance with determining appropriate elections as provided for various adjustments under Pillar Two-GloBE Rules.

Post GloBE year

1. Assistance with compliance for Pillar Two-GloBE Rules related disclosures requirements as proposed to be issued under IND-AS/ IFRS/ or other accounting standards.
2. Compliance with Pillar Two-GloBE Rules by assisting in filing GloBE Information Return for first GloBE effective year, i.e., 2024.

GLOSSARY OF TERMS

Abbreviation	Meaning
BBBA	Build Back Better Act
BEPS	Base Erosion and Profit Shifting
CbC	Country-by-Country
CbCR	CbC Reporting
CE	Constituent Entity
CFC	Controlled foreign company
CFS	Consolidated Financial Statements
CIT	Corporate income tax
ECB	European Central Bank
ETR	Effective tax rate
FX	Foreign exchange
FXGL	Foreign currency gains or losses
GAAP	General accepted accounting principles
GILTI	Global Intangible Low-Taxed income
GloBE	Global Anti-Base Erosion
HTJ	High Tax Jurisdiction
IAS	International Accounting Standards
IF	Inclusive Framework
IFRS	International Financial Reporting Standards
IHC	Intermediate Holding Company
IIR	Income Inclusion Rule
JV(s)	Joint Venture(s)
LTJ	Low Tax Jurisdiction
LTCE	Low-Taxed Constituent Entity
MNE	Multinational Enterprise
OECD	Organization for Economic Co-operation and Development
PE	Permanent Establishment
POPE	Partially-Owned Parent Entity
QDMTT	Qualified Domestic Top-up Tax
UPE	Ultimate Parent Entity

Nilesh Chandak has been a key contributor in preparation of this publication.

ABOUT DHRUVA ADVISORS

Dhruva Advisors LLP is a tax and regulatory services firm, working with some of the largest multinational and Indian corporate groups. Its brings a unique blend of experience, having worked for the largest investors in India, advising on the largest transactions and on several of the largest litigation cases in the tax space. We also work closely with the Government on policy issues and with our clients on advocacy matters.

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