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GloBE Bulletin

September 2023 - Edition 3

Dhruva publications are designed to assist readers to keep abreast with latest news, developments and tax issues that concern businesses. It is our endeavour put forward painstaking research which equips you with the knowledge necessary to navigate the complex world of taxation effectively. At Dhruva, our international tax team is a frontrunner in analysing all latest developments with respect to the OECD IF's proposed two-pillar solution. We hope that you will find this publication to be a valuable resource and we look forward to hearing your comments and suggestions.

Corporate restructurings encompass a range of strategic manoeuvres that companies undertake to optimize their organizational structure, often aiming to enhance efficiency, profitability, or competitiveness. These strategies include mergers, acquisitions, divestments, spin-offs, and shifts in ownership, offering companies opportunities to redefine their structure and influence their financial position and market relevance. Cross-border corporate restructurings, when executed strategically, can have a profound impact on a company's tax liabilities and global competitiveness. Model GloBE Rules provide detailed guidance on various intricacies of corporate restructurings. This bulletin sheds light on how corporate restructurings are treated in the Model GloBE Framework.

This is the third edition of our monthly alert series on the GloBE Rules. This essential resource aims to serve as a compass in navigating the evolving landscape of GloBE Rules, enabling one to anticipate and effectively respond to the challenges and opportunities presented by the imminent implementation of these rules.



A. Country Updates

G20: The New Delhi Leaders' Summit Declaration adopted at G20 Summit held in New Delhi, India in September 2023 reaffirmed the G20 leaders' commitment to "continue cooperation towards a globally fair, sustainable and modern international tax system appropriate to the needs of the 21st century." The G20 leaders, remain committed to the swift implementation of the two-pillar international tax package. They welcomed the steps taken by various countries to implement the GloBE Rules and recognized the need for coordinated efforts towards capacity building to implement the two-pillar international tax package effectively. Furthermore, at the request of Indian G20 presidency, the OECD secretariat is developing a handbook to support the effective implementation of the GloBE Rules and to develop a plan for additional support and technical assistance for developing countries.

UAE: The Ministry of Finance (MoF) in the UAE, in partnership with the OECD, recently hosted the second forum on Pillar Two GloBE Rules. This event underscores the UAE's commitment to international taxation standards. The forum featured key dignitaries, including the Minister of State for Financial Affairs, and discussed the UAE's dedication to transparent financial and tax policies that support its national development goals. It emphasized the importance of international cooperation in combating tax base erosion and profit shifting. While the MoF announced that it will not implement the Pillar Two Rules in 2024, the Global Minimum Tax was highlighted as a crucial mechanism to ensure fair taxation internationally. The forum explored technical aspects and developments in GloBE rules, discussed their impact on local businesses and taxpayers, and addressed the administrative changes required for their implementation within local legal frameworks. Panel discussions involved experts from various sectors. The UAE's commitment to developing a sustainable tax ecosystem and enhancing its

global competitiveness as a financial center was reaffirmed. The event also emphasized the longstanding cooperation between the UAE and the OECD in fostering tax policy development and reform. Furthermore, the forum focused on international efforts to establish fair taxation standards and addressed the implementation of the GloBE Rules in the UAE and the broader MENA region.

Taiwan: On 30 August 2023, Taiwanese Government made an official announcement that in the near future, it will conduct a thorough evaluation of its existing tax incentives to ensure their alignment with Pillar Two. In the medium term, it is expected to introduce a GloBE compliant QDMTT however, no specified timeline has been committed.

Africa: To assist African countries that wish to enact a Domestic Minimum Top-up Tax (DMT), African Tax Administration Forum (ATAF) has developed a 'Suggested Approach to Drafting Domestic Minimum Top-up Tax Legislation'. The Suggested Approach, developed under the guidance of the African Union, sets out the policy issues African countries should consider in adopting a DMT.

Italy: The Ministry of Economy and Finance of Italy published a draft legislation on 11 September that intends to incorporate the EU Directive's provisions for implementing Pillar Two GloBE Rules into its national legal framework. The proposed bill encompasses the introduction of the IIR and the UTPR, as mandated by the EU Directive. Additionally, the bill outlines the incorporation of a QDMTT. Notably, the EU member states achieved unanimous consensus on the implementation of Pillar Two in December 2022 and Italy is required to fully adopt the EU Directive's provisions into its legislation by December 31, 2023. As per the Directive, it is expected that QDMTT and IIR will be introduced from 2024 while UTPR will be introduced from 2025. The



draft legislation is open for feedback till 1 October 2023.

Sweden: The Swedish Government announced a Council on Legislation's referral on 31 August that intends to incorporate the EU Directive's provisions for implementing Pillar Two GloBE Rules into its national legal framework. The proposed bill encompasses the introduction of the IIR and the UTPR, as mandated by the EU Directive. Additionally, the bill outlines the incorporation of a QDMTT. As per the Directive, it is expected that QDMTT and IIR will be introduced from 2024 while UTPR will be introduced from 2025.

Lithuania: Lithuania issued a statement on 08 September 2023 indicating its intention to defer the implementation of the GloBE Rules by six years until 31 December 2029. However, it aims to establish a domestic minimum top-up tax from 2025 onwards. However, a public consultation process is expected before this law gets approved in Parliament.

Hungary: The Finance Minister of Hungary has initiated discussions with major Hungarian corporations to maintain the country's competitiveness as they prepare to draft legislation in the upcoming autumn to incorporate the EU's global minimum tax directive into national law. According to a government announcement dated September 25, Finance Minister's consultation with corporate leaders is aimed to explore proposals that would enable Hungarian companies to continue paying a reduced tax rate. The Ministry of Finance intends to consider the feedback from these consultations when presenting the draft regulations for the transposition of EU Directive to the Hungarian Parliament. The government's objective is to craft global minimum tax legislation that ensures Hungary remains an appealing destination for business investments.



B. Knowledge Bytes:

Corporate restructurings encompass a broad spectrum of strategies that have been dealt with in detail in the Model GloBE Rules. The realm of corporate restructuring is vast and multifaceted, and to do justice to this complex subject, will address it in two parts. This edition of the bulletin focuses on revenue threshold criteria in case of mergers and demergers, application of the Rules in case of entities joining or leaving an MNE Group, GloBE Reorganisation, and transfer / deemed transfer of assets and liabilities.

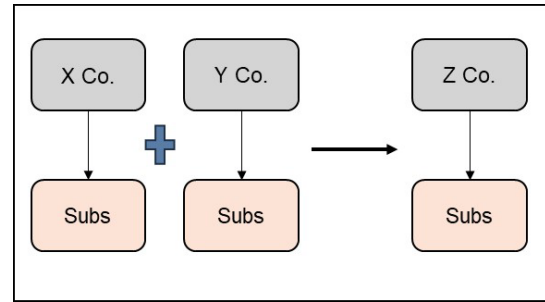
1. MERGER

Art. 6.1.2 defines 'merger' as any arrangement where:

- all or substantially all of the Group Entities of two or more separate Groups are brought under common control such that they constitute Group Entities of a combined Group; or
- an Entity that is not a member of any Group is brought under common control with another Entity or Group such that they constitute Group Entities of a combined Group.

The definition of 'merger' under the GloBE framework is broader than its meaning in domestic law. Even an all-cash transaction of buying an entity and bringing it under the control of an MNE Group in its distinct structure is treated as 'merger' under the GloBE framework.

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 (included in each of their consolidated financial statements (CFS)) together crosses the threshold of 750 million euros in at least two of the four years prior to the year of merger.



Example 1 - X Co. and Y Co. merge to form Z Co. in Y5. They separately report these consolidated revenue numbers for Y1 to Y4:

Year	X Co	Y Co
Y1	300	150
Y2	460	370
Y3	440	400
Y4	200	320

Sum of revenue of merged group Z Co. (i.e., X Co. and Y Co.) for Y1 to Y4 is as follows:

Year	Revenue (in € mns)
Y1	450
Y2	830
Y3	840
Y4	520

Since, revenue threshold of € 750 mn is met in Y2 and Y3, hence, Z Co is in-scope of GloBE Rules from start of Y5.

Note: Neither Group's pre-merger revenues are adjusted for transactions that occurred between the Groups in the preceding years, notwithstanding that transactions that occurred between Entities will be eliminated in consolidation after the merger.

2. DEMERGER

Art. 6.1.3 defines 'demerger' as any arrangement where the Group Entities of a single Group are separated into two or more Groups that are no longer consolidated by the same UPE. As with merger, the definition of 'demerger' under the GloBE framework is broader than its meaning in domestic law and



includes even an all-cash deal of selling a group of entities and relinquishing control over it.

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.

Example 2 - Say, M Group (demerged group) has following consolidated revenues following demerger:

Year	Revenue (in € mns)
Y1	820
Y2	450
Y3	550
Y4	760

GloBE Rules will be applicable on M Co. for Y1 and thereafter Y4.

Example 3 - Say, N Group (demerged group) has following consolidated revenues following demerger:

Year	Revenue (in € mns)
Y1	550
Y2	780
Y3	790

GloBE Rules will be applicable on N Co. in Y3.

3. Disposing Entity perspective

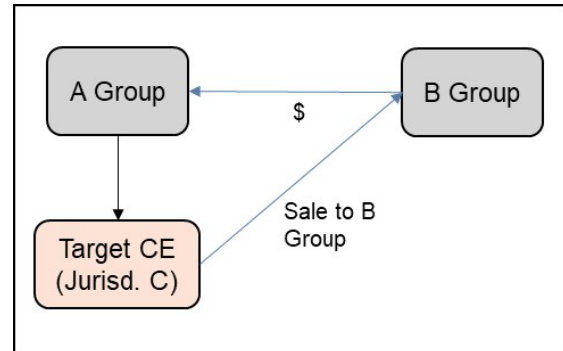
The Model Rules envisage multiple scenarios of corporate restructurings and provide guidance for ETR computation when a constituent entity (CE) joins or leaves an MNE Group. For the sake of simplicity, we have bifurcated these situations based on disposing entity's

perspective versus acquiring entity's perspective.

We first discuss the Rules from the perspective of the disposing entity under various scenarios as follows:

Case 1 – CE leaves an MNE Group:

Art. 3.2.1 requires the gain / loss on disposal to be excluded from the GloBE Income / Loss of the disposing entity.



Art. 6.2.1 provides the following guidance when a CE leaves an MNE Group –

- **Dual membership:** The target CE is treated as CE of both the acquiring and disposing MNE Groups in the acquisition year. Both MNE Groups will take their respective proportion of target CE's income and expenses (as considered in preparation of their respective CFS) into account in determining their tax liability (if any) under the GloBE rules.
- **Tax charge:** IIR and UTPR tax liability will be imposed only to the extent the CE's income and expenses are included in the UPE's CFS.
- **Asset Value:** In the acquisition year and each succeeding year, the target shall determine its GloBE Income or Loss and Adjusted Covered Taxes using its historical carrying value of the assets and liabilities.
- **Substance-based Income Exclusion (SBIE):**
 - Each MNE Group takes into account the Eligible Payroll Costs arising during its



period of ownership and that it bears economic responsibility for.

- Furthermore, the computation of carrying value of the target's Eligible Tangible Assets for SBIE shall be adjusted proportionally to correspond with the length of the relevant Fiscal Year that the target was a member of the MNE Group. However, it needs to be noted that value of assets for SBIE purpose should factor purchase accounting consolidation adjustments attributable to the acquisition.

Example 4 - Assume B Group acquires target CE from 1 September (both A and B follow calendar years). Payroll costs of target CE for the entire year are 480. Furthermore, target CE owns tangible assets (qualifying for SBIE) details of which are as follows:

- Opening net carrying value in A Group's books = 150.
- Depreciation of 100 charged in 8 months period.

Eligible payroll carve-out for target CE's jurisdiction →

= Eligible Payroll Costs arising during its period of ownership

= (480 * 8/12)

= 320

Opening Carrying Value = 150

Closing Carrying Value = 50

Average Carrying Value = 100

Proportional Adjustment for SBIE →

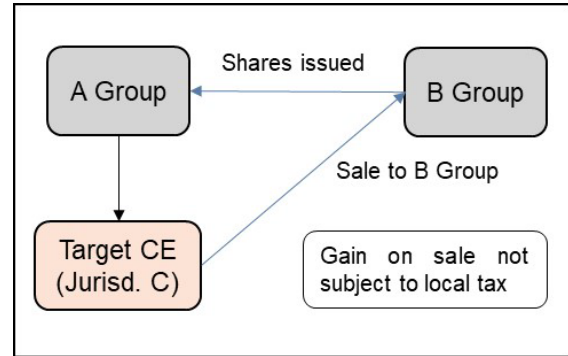
= (100 * 8/12)

= 67

Case 2 – GloBE Reorganisation:

Art. 10.1.1 define “GloBE Reorganisation” as a transformation or transfer of assets and liabilities such as in a merger, demerger, liquidation, or similar transaction where:

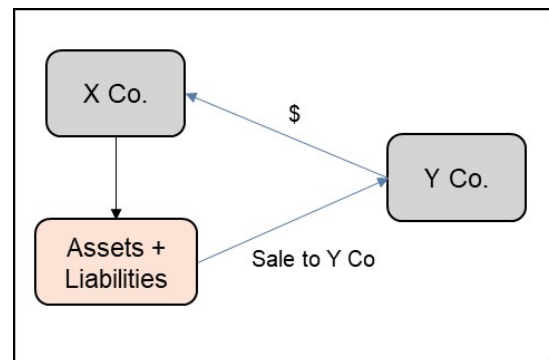
- consideration for the transfer is equity interests (in whole or in significant part);
- Selling entity's gain / loss is not subject to tax (in whole or in part); and
- Buying entity computes taxable income using the selling entity's carrying value in the assets (adjusted for any Non-qualifying Gain or Loss).



In the case of GloBE Reorganisation, gain / loss on disposal is excluded from GloBE Income / Loss. However, the disposing CE will include gain or loss on the disposition in its GloBE Income or Loss computation to the extent of the Non qualifying Gain or Loss (i.e., lesser of amount subject to tax or financial accounting net income or loss).

Case 3 – Transfer of assets and liabilities from one CE to another CE:

Art. 6.3.1 requires the disposing CE to include the gain or loss on disposition in the computation of its GloBE Income or Loss.





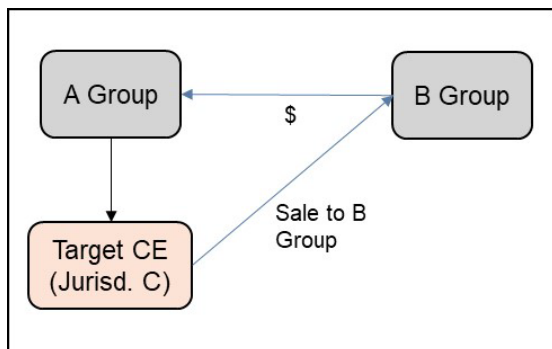
4. Acquiring Entity perspective

We next discuss the Rules from the perspective of the acquiring entity under different scenarios:

Case 1 – CE leaves an MNE Group:

Given that Art. 3.2.1 excludes gain / loss from the disposing entity's GloBE Income / Loss computation, acquiring CE should ignore the effect of any purchase accounting consolidation adjustments and treat the assets of the target at historical carrying values (denying any step-up in basis). Accordingly, goodwill and amortisation are not recognised.

However, where the financial accounting standard used by the UPE in preparing its CFS permit the UPE to 'push down' adjustments to the carrying value of assets and liabilities that were attributable to a purchase of a business to the separate accounts of the acquired CE, the CE may use the carrying value reflected in its separate accounts if the acquisition occurred prior to 1 December 2021 and the MNE Group does not have sufficient records to determine its Financial Accounting Net Income or Loss with reasonable accuracy based on the unadjusted carrying values of the acquired assets and liabilities. In such cases, however, the CE must also take into account any deferred tax assets and liabilities arising in connection with the purchase in the computation of its Financial Accounting Net Income or Loss and its Adjusted Covered Taxes.



Example 5 – Continuing from Example 4, assume that fair value of asset in B Group's books of accounts is 180 (net of depreciation for 4 months).

Opening Carrying Value = 0

Closing Carrying Value = 180

Average Carrying Value = 90

Proportional Adjustment for SBIE →

= $(90 * 4/12)$

= 30

B Group's eligible payroll carve-out for target CE's jurisdiction →

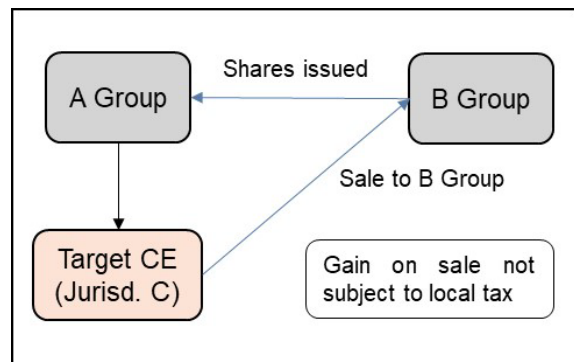
= Eligible Payroll Costs arising during its period of ownership

= $(480 * 4/12)$

= 160

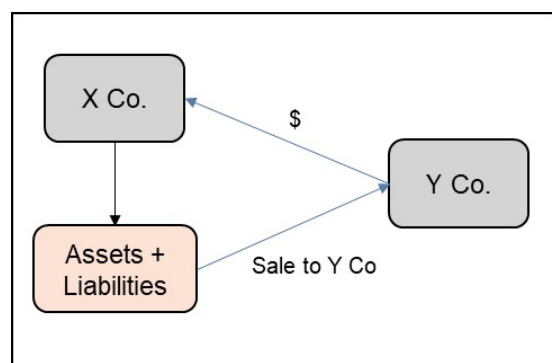
Case 2 – GloBE Reorganisation:

Under Art. 6.3.2, the acquiring CE will determine its GloBE Income or Loss after the acquisition using the disposing CE's carrying values of the acquired assets and liabilities upon disposition.



However, if the disposing CE recognises non-qualifying gain / loss, then the acquiring CE will determine GloBE Income / Loss using the disposing CE's carrying value of acquired assets / liabilities adjusted with local tax rules to account for the non-qualifying gain / loss.

Case 3 - Transfer of assets and liabilities from one CE to another CE:



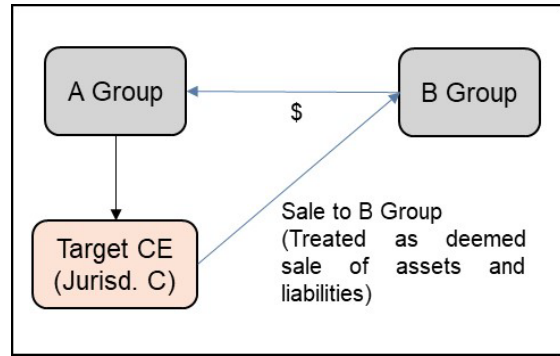


Given that Art. 6.3.1 requires the disposing entity to include gain / loss in its GloBE Income, accordingly the acquiring CE should determine its GloBE Income / Loss using the acquiring CE's carrying value of the acquired assets and liabilities determined under the accounting standard used in preparing CFS of the UPE.

The acquiring Entity may be required under the applicable accounting standard to recognise assets and liabilities that were not recognised in the financial accounts of the disposing Entity, such as goodwill or other intangible assets. In addition, the acquiring Entity may be required to recognise bargain purchase gains under the applicable accounting standard. In such cases, amortisation of the intangible assets or the bargain purchase gain will be included in the computation of GloBE Income or Loss only to the extent included in the acquiring Entity's Financial Accounting Net Income or Loss.

5. Special case where transfer of controlling interest in a CE is treated as deemed transfer of its underlying assets and liabilities:

The acquisition or disposal of a Controlling Interest in a CE is treated as an acquisition or disposal of the assets and liabilities if the jurisdiction in which the target CE is located, (or in the case of a Tax Transparent Entity, the jurisdiction in which the assets are located) treats the acquisition or disposal of that Controlling Interest in the same or similar manner as an acquisition or disposition of the assets and liabilities and imposes a Covered Tax on the seller on the difference between the tax basis and the consideration paid in exchange for the Controlling Interest or the fair value of the assets and liabilities.



In such a case, the gain / loss on disposal is excluded from the GloBE Income of disposing entity's jurisdiction. It is instead included in the GloBE Income of the target CE's jurisdiction.

The acquiring CE should determine its GloBE Income / Loss using the acquiring CE's carrying value of the acquired assets and liabilities determined under the accounting standard used in preparing CFS of the UPE.

The acquiring CE may be required under the applicable accounting standard to recognise assets and liabilities that were not recognised in the financial accounts of the disposing Entity, such as goodwill or other intangible assets. In addition, the acquiring CE may be required to recognise bargain purchase gains under the applicable accounting standard. In such cases, amortisation of the intangible assets or the bargain purchase gain will be included in the computation of GloBE Income or Loss only to the extent included in the acquiring Entity's Financial Accounting Net Income or Loss.



C. Around the globe:

European Union (27 countries)

Austria	Italy
Belgium	Latvia
Bulgaria	Lithuania
Croatia	Luxembourg
Cyprus	Malta
Czech Republic	Netherlands
Denmark	Poland
Estonia	Portugal
Finland	Romania
France	Slovakia
Germany	Slovenia
Greece	Spain
Hungary	Sweden
Ireland	

Rest of Europe (22 countries)

Albania	Liechtenstein
Andorra	Monaco
Belarus	Montenegro
Bosnia Herzegovina	North Macedonia
Faroe Islands	Norway
Georgia	San Marino
Gibraltar	Serbia
Guernsey	Switzerland
Iceland	Turkey
Isle of Man	Ukraine
Jersey	United Kingdom

Africa (25 countries)

Angola	Mauritania
Benin	Mauritius
Botswana	Morocco
Burkina Faso	Namibia
Cabo Verde	Republic of Congo
Cameroon	Senegal
Congo	Seychelles
Côte d'Ivoire	Sierra Leone
Djibouti	South Africa
Egypt	Togo
Eswatini	Tunisia
Gabon	Zambia
Liberia	

Asia (28 countries)

Armenia	Malaysia
Azerbaijan	Maldives
Bahrain	Mongolia
Brunei	Oman
China	Papua New Guinea
Cook Islands	Qatar
Hong Kong	Russia
India	Samoa
Indonesia	Saudi Arabia
Israel	Singapore
Japan	South Korea
Jordan	Thailand
Kazakhstan	UAE
Macau	Vietnam

North America (24 countries)

Anguilla	Grenada
Antigua	Haiti
Bahamas	Honduras
Barbados	Jamaica
Bermuda	Mexico
British Virgin Islands	Montserrat
Canada	Panama
Cayman Islands	Saint Lucia
Costa Rica	St. Vincent and the Grenadines
Dominica	St. Kitts and Nevis
Dominican Republic	Turks and Caicos Islands
Greenland	USA

South America (11 countries)

Argentina	Curacao
Aruba	Paraguay
Belize	Peru
Brazil	Trinidad and Tobago
Chile	Uruguay
Colombia	

Australasia (2 countries)

Australia	New Zealand
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Legend

	Formal adoption of GloBE Rules from 2024 (4 countries)
	Policy framework in place to introduce IIR, QDMTT in 2024 and UTPR in 2025 (32 countries)
	Policy framework in place to introduce IIR, QDMTT and UTPR in 2025 (3 countries)
	Written declaration to implement GloBE Rules though timelines are uncertain (12 countries)

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