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GloBE Bulletin

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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.

Computation of top-up taxes (TUT) is an extensive and elaborate process entailing multiple steps. The fact that different countries around the world follow different accounting practices makes this task all the more complicated and trickier. At the core of this intricate mechanism lies the GloBE income computation process, involving a series of nuanced adjustments. Furthermore, the model GloBE Rules also provide various elections while computing the income which require prudent judgements and detailed analysis.

In this edition, we aim to analyse the GloBE income computation process by presenting the essential components of these income adjustments in a simplified manner. Our goal is to offer readers a straightforward analysis, helping them grasp the core elements of income computation under the GloBE Rules.

This is the fifth 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:

Barbados: During a parliamentary address on 07 November 2023, the Prime Minister of Barbados, Hon. Mia Mottley, announced the Barbadian Government's intention to enforce global minimum tax rules from 2024. The Government intends to implement a Qualified Domestic Minimum Top-Up Tax (QDMTT) from 1 January 2024 which would apply to a constituent entity (CE) in Barbados only if its ultimate parent entity (const) is located in a jurisdiction that enforces an Income Inclusion Rule (IIR) or a UTPR. Additionally, the companies in scope of the GloBE rules will be required to pre-pay corporation tax monthly effective January 2024, which would, in the Government's opinion, bring Barbados in line with best international tax practices.

Belgium: The Government of Belgium on 13 November 2023, submitted draft legislation to the lower house of the Parliament that would implement the OECD IF's GloBE Rules. 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. Belgium 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 bill also intends to amend Belgium's research and development credit so that it is refundable in four years instead of five in order to be considered a qualifying refundable tax credit under the GloBE Rules.

Croatia: The Government of Croatia on 6 November 2023, published draft legislation that would implement the OECD IF's GloBE Rules. 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. Croatia 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 was open for public comments till 20 November.

Germany: On 10 November 2023, the lower house of the German Parliament (Bundestag) passed the draft legislation to transpose the EU Pillar Two Directive into the German law. According to the draft legislation, it is expected that QDMTT and IIR will be introduced from 2024 while UTPR will be introduced from 2025. The draft legislation must be passed in the upper house of the German parliament (Bundesrat) and be promulgated to become effective.

Hungary: On 21 November 2023, the unicameral National Assembly of Hungary passed the legislation to transpose the EU Pillar Two Directive into the Hungarian law. According to the legislation, QDMTT and IIR will be introduced from 2024 while UTPR will be introduced from 2025. The legislation also introduces a new research and development tax credit which intends to provide relief for the year in which eligible R&D costs are incurred and three subsequent years, subject to certain conditions.

Luxembourg: On 13 November 2023, the Government of Luxembourg issued amendments to the draft legislation to transpose the EU Pillar Two Directive. The amendments are aimed at incorporating certain points of the Administrative Guidances released by the OECD IF in February and July 2023.

Netherlands: On 26 October 2023, the lower house of the Dutch Parliament passed the draft legislation to transpose the EU Pillar Two Directive into the Dutch law. According to the draft legislation, it is expected that QDMTT and IIR will be introduced from 2024 while UTPR will be introduced from 2025. The draft legislation must be passed in the upper house of the Dutch parliament and be promulgated to become effective.

Jamaica: Speaking at a conference in Washington, organised by the U.S. Council for International Business and the OECD, Marlene Nembhard Parker, Deputy Commissioner General of legal support services at Tax Administration Jamaica informed that Jamaica intends to adopt a QDMTT as part of the GloBE Rules implementation. However, the timing of adoption is uncertain and dependent on the suitable amendment of a regional agreement which recognizes only source jurisdictions and does not recognize residence jurisdictions.

Malaysia: The Government of Malaysia on 7 November 2023, submitted draft legislation to the Parliament that would implement the OECD IF's GloBE Rules. The proposed bill encompasses the introduction of a domestic top-up tax (QDMTT) as well as a multinational top-up tax (IIR) from 2025. The draft legislation also intends to give power to the Director-General of Malaysia's Inland Revenue Board to issue additional domestic top-up tax or multinational top-up tax assessments within five years after a constituent entity files a return.

South Korea: On 9 November 2023, South Korea initiated public consultation on a Decree detailing Pillar Two GloBE Rules. The Decree includes guidance relating to scope of the Rules, computation of income / loss, safe harbours, and the GloBE Information Return.

Others: The EU Pillar Two Directive provides an option of delayed implementation of the GloBE Rules to member states with less than 12 UPEs of in-scope MNEs. Estonia, Latvia, Lithuania, Malta, and Slovakia have requested delayed implementation of the GloBE Rules to the European Commission.

B. Knowledge Bytes:

Calculation of GloBE income / loss is governed by Article 3 of the model GloBE Rules and comprises the following key adjustments to Financial Accounting Net Income / Loss (FANIL):

- Nine adjustments as per Art. 3.2.1.
- 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 Administrative Guidance also requires adjustment to be made.

The broad theme of these adjustments is to ensure that the ETR arrived at by the Constituent Entities in different jurisdictions reflects consistency and meaningfulness.

This edition along with the next one would focus on a comprehensive analysis of the key adjustments in the calculation of the GloBE income / loss.

The first step in the income calculation process is arriving at FANIL, which is the net income or loss determined for a CE (before any consolidation adjustments eliminating intra-group transactions) in preparing consolidated financial statements (CFS) of the UPE.

Following are the key adjustments stipulated under Art. 3.2.1 and Administrative Guidance:

1. Dividend Income

As per Art. 3.2.1(b), GloBE income should exclude all dividend income apart from those arising from a short-term portfolio shareholding (i.e., economically held for less than one year and carrying rights to less than 10% of the profits, capital reserves or voting rights of the distributing entity at the date of distribution or disposition).

		Holding period	
		< 1 year	>= 1 year
Ownership %	< 10%	Included	Excluded
	>= 10%	Excluded	Excluded

2. Equity Gain / Loss

Art. 3.2.1(c) read with Art. 10.1 excludes following three categories of gains and losses:

a. Gains and losses from changes in fair value of an Ownership Interest (except portfolio shareholding)

b. Profit or loss in respect of an Ownership Interest included in FANIL under the equity method of accounting

c. Gains and losses from disposition of an Ownership Interest (except portfolio shareholding)

		Holding period	
		< 1 year	>= 1 year
Ownership %	< 10%	Included	Included
	>= 10%	Excluded	Excluded

It can be observed that holding period is a critical factor in determining the inclusion / exclusion for dividends but not for equity gain / loss.

3. Revaluation Of Property, Plant And Equipment (PPE)

Financial accounting standards provide an election to entities to record PPE under either the cost model or the revaluation model. Under the revaluation model, revaluation gains are generally recorded under Other Comprehensive Income (OCI) while losses are generally recognized in profit and loss. Furthermore, gains that are recorded in OCI can be either recyclable (i.e., subsequently routed through profit and loss in future upon disposition) or non-recyclable.

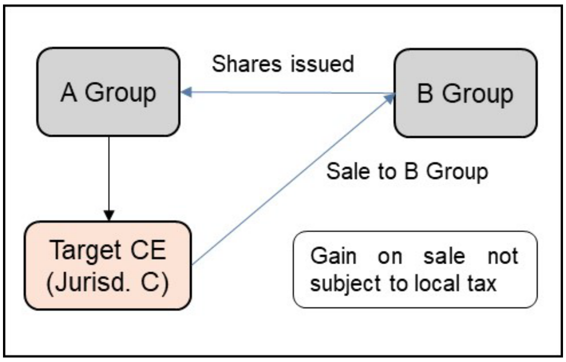
The broad theme of adjustment for revaluation gain / loss of PPE under the GloBE Rules is to include it in GloBE income / loss when the financial standards require the gain / loss to be reported in OCI and such gain or loss are subsequently not required to be reported in the profit and loss.

Accordingly, Art. 3.2.1(d) provides that revaluation gain / loss of PPE (if routed through OCI and non-recyclable to profit and loss) should be separately included in the GloBE income / loss i.e., gain should require a positive adjustment to FANIL while loss should require a negative adjustment to FANIL. Other revaluation of PPE does not require any adjustment under the GloBE Rules.

4. 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 the disposing entity's GloBE Income / Loss (i.e., gains shall require a negative adjustment and losses shall require a positive adjustment). 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).

5. Policy Disallowed Expenses

Tax laws around the world disallow illegal payments, including bribes, kickbacks, fines, and penalties. The same principle has been followed under the model GloBE Rules.

It is to be noted that in case of 'fines and penalties', there is a materiality threshold that prevents de minimis fines from being disallowed and the rule only applies to fines and penalties >= EUR 50,000 (or an equivalent amount in the functional currency of the entity). However, no such de minimis threshold exists for bribes and kickbacks which are always disallowed.

6. Prior Period Errors and Changes In Accounting Principles

If there are certain prior period errors that affect the computation of income or loss of such previous year, then effect of such changes can be given either in the current year's profit and loss or in the opening equity. Similarly, when an MNE Group changes an accounting principle or policy used in the determination of its FANIL, it may be required to re-determine its opening equity as if it had used the new accounting principle or policy in previous Fiscal Years.

Where the effects are given in profit and loss, they are already accounted for in FANIL. However, GloBE Rules require that if the effects are given in opening equity, then such gains / losses should be adjusted in FANIL to include them in GloBE income / loss computation.

7. Foreign Currency Gains / Losses

In any transaction, foreign currency gains and losses can arise due to fluctuations between transaction currency (currency in which transaction is undertaken), accounting currency (presentation currency in which transaction is recorded in the CE's accounts), and tax currency (currency in which such transaction is shown in tax return). The broad theme of the GloBE Rules adjustment is to align GloBE income / loss with tax income and thus, only relevant fluctuations between transaction currency and tax currency are included in GloBE income.

Transaction	Accounting	Tax	Impact in financial accounts	Adjustment to GloBE Income
USD	USD	Euro	No impact	FX gain: add FX loss: deduct
Euro	USD	Euro	Included in profit / loss	FX gain: deduct FX loss: add
Pound	USD	Euro	Included in profit / loss (FC fluctuation b/w Pound and USD)	FX gain: deduct FX loss: add
			Not included in profit / loss (FC fluctuation b/w Pound and Euro)	FX gain: add FX loss: deduct

8. Pension Expenses

Organisations generally contribute pension payments to a dedicated pension fund which invests such funds and make payments to retiring employees as and when due. In such model, GloBE Rules allow pension liabilities as expenses to the extent of contributions made during the year and not based on pension expenses accrued in books of accounts.

Treatment for various components is shown below:

Particulars	Adjustment to FANIL
Contribution to Pension Fund	Deducted
Accrued pension expense	Added
Accrued pension income	Deducted
Surplus fund transferred to company	Added
Direct pension payments	-

However, in cases where no contribution is made to pension funds and pension payments are directly made as and when due, the GloBE Rules allow the actual payments to be allowed as expenses.

While these adjustments deal with broad items of income and losses, the model GloBE Rules further provide guidance on specific items such as treatment of stock-based compensation, debt releases, intra-group financing arrangements, etc. which shall be dealt with in the next edition.

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

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

Legend	
(green)	Formal adoption of GloBE Rules from 2024 **(5 countries)**
(blue)	Policy framework in place to introduce IIR, QDMTT in 2024 and UTPR in 2025 **(25 countries)**
(orange)	Policy framework in place to introduce IIR, QDMTT and UTPR in 2025 **(5 countries)**
(yellow)	Written declaration to implement GloBE Rules though timelines are uncertain **(14 countries)**
(grey)	EU member states opting for delayed implementation **(5 countries)**

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