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GloBE Bulletin

February 2024 - Edition 8

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.

The Model GloBE Rules provide detailed computation mechanism to arrive at the amount of top-up tax liability. While data crunching and performing detailed calculations is an intensive exercise to ensure that GloBE income for the in-scope MNE Groups is consistently computed, the Model Rules also provide certain relaxations. One such shield is the Substance-based Income Exclusion.

The substance-based income exclusion is a mechanism aimed at ensuring that a multinational entity's income derived from substantive economic activities in a particular jurisdiction isn't subject to the Global Minimum Tax. Essentially, it allows MNE to exclude from the jurisdictional calculation of the top-up tax liability, certain income that has sufficient economic substance and substance-based taxation in the jurisdiction where it arises.

This is the eighth 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:

Qatar: On 2 February 2024, Qatar published amendments to its Income Tax Law in its Official Gazette. These amendments aim to introduce regulations that are set to introduce a 15% domestic minimum tax.

Singapore: On 16 February 2024, Singapore's Finance Minister, Lawrence Wong, announced in his budget speech that Singapore Government is set to introduce the Income Inclusion Rule (IIR) and a Domestic Top-up Tax (DTT) to MNE Groups qualifying the threshold for Pillar Two GloBE Rules. The IIR and DTT are intended to be introduced from financial years beginning in 2025. Singapore also intends to introduce refundable investment credits and other similar measures to ensure Singapore continues to remain competitive. Companies can receive up to 50% of investment credits on qualifying expenditures which include capital expenditures, intangible assets, and training costs, with unused credits intended to be refunded in cash within four years after the company meets the requirements.

South Africa: On 21 February 2024, the Government of South Africa published the draft Global Minimum Tax Bill and invited stakeholders to comment on the same. The Government intends to apply the GloBE Rules on an ambulatory basis, whereby it is proposed that where applying the GloBE Model Rules and Commentary, the most recent version of the Commentary will apply (updated by any Administrative Guidance that has been published before the start of the fiscal year) in respect of calculations that are being performed. The proposed legislation, if implemented would apply to fiscal years beginning on or after 1 January 2024. Alongside the Global Minimum Tax Bill, the Government also introduced the Global minimum Tax Administration Bill, which deals with administrative aspects of the GloBE Rules including the return filing. Both bills are open for public consultation till 31 March 2024.

Bahamas: On 21 February 2024, the Prime Minister and Finance Minister of Bahamas announced the introduction of QDMTT into the Bahamian law, which is aimed at MNEs within the scope of the GloBE Rules. The Government is expected to introduce a draft legislation by end of May 2024 which would be followed by a public consultation process, post which the final law document shall be submitted to the Parliament for approval.

Greece: On 22 February 2024, the Greek Ministry of Economy and Finance launched a public consultation on imposing the GloBE Rules into its domestic legislation. The draft GloBE Rules legislation was introduced on 9 January 2024. Notably, the EU member states achieved unanimous consensus on the implementation of Pillar Two in December 2022 and Greece was 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.

Isle of Man: On 20 February 2024, the Government of Isle of Man announced a proposal to increase the tax rate for certain banks and large retailers from 10% to 15%. This increased rate would apply only for 2024-2025 year of assessment and apply to those banks and retailers which are in-scope for Pillar Two GloBE Rules and have parent entities in a jurisdiction where IIR is in effect from 2024.

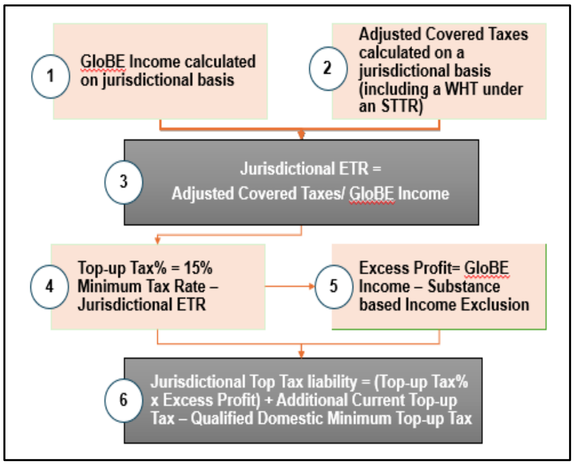
Latvia: On 8 February 2024, the Government of Latvia approved the Pillar Two legislation. Although Latvia has deferred the implementation of the EU Directive until 2030, the approved legislation aims to address reporting obligations.

Estonia: On 30 January 2024, the Government of Estonia approved the Pillar Two legislation. Although Estonia has deferred the implementation of the EU Directive until 2030, the approved legislation aims to address reporting obligations.

European Union: On 25 January 2024, the European Commission initiated infringement procedures against nine Member States—Cyprus, Estonia, Greece, Latvia, Lithuania, Malta, Poland, Portugal, and Spain—for failing to communicate national measures transposing the Minimum Tax Directive by the 31 December 2023 deadline. Despite Estonia, Latvia, Lithuania, and Malta indicating their intent to utilize the delay option permitted by Article 50 of the Directive, the Commission opened infringement procedures due to their tardiness in implementing legislation on administrative provisions required despite opting for delayed introduction of charging provisions. Cyprus, Greece, Poland, Portugal, and Spain did not opt for delay and are obligated to fully transpose the Directive, but they have yet to enact necessary rules under domestic law. The implicated Member States have two months to respond to formal notices and complete transposition, after which the Commission may issue a reasoned opinion and provide an additional two months for compliance. Failure to provide a satisfactory reply may result in the Commission referring the case to the Court of Justice of the EU.

B. Knowledge Bytes:

The Model GloBE Rules stipulate detailed computation mechanisms to calculate GloBE Income and Adjusted Covered Taxes which are used in computing the jurisdictional Effective Tax Rate (ETR). The difference between the Minimum Rate (15%) and jurisdictional ETR is then multiplied with Excess Profit to derive the amount of top-up tax (TUT) payable for the jurisdiction. Excess Profit is arrived at by subtracting the substance-based Income Exclusion (SBIE) from the GloBE income. The GloBE mechanism is shown in the image below:-



The policy rationale behind a formulaic, substance-based carve-out, based on payroll and tangible assets is to exclude a fixed return for substantive activities within a jurisdiction from the application of the GloBE Rules. The use of Payroll and Tangible Assets as indicators of substantive activities is justified because these factors are generally expected to be less mobile and less likely to lead to tax-induced distortions. By privileging entities with significant payroll expenditure and tangible assets in a jurisdiction, this carve-out incentivizes genuine economic activity and ensures that tax obligations reflect substantive contributions to the local economy. Conceptually, excluding a fixed return from substantive activities focuses GloBE on “excess income”, such as intangible-related income, which is most susceptible to BEPS risks.

Art. 5.3.1 of the Model GloBE Rules states that applying the SBIE is an Annual Election and that a Filing Constituent Entity (CE) of an MNE Group may elect not to compute or claim the SBIE. However, it also needs to be noted that if SBIE exceeds Net GloBE income for a jurisdiction for a fiscal year, excess cannot be carried forward or backward to reduce Net GloBE Income of another fiscal year. The SBIE amount for a jurisdiction is the sum of the payroll carve-out and the tangible asset carve-out for each CE, except for CEs that are Investment Entities, in that jurisdiction.

A. Payroll carve-out amount

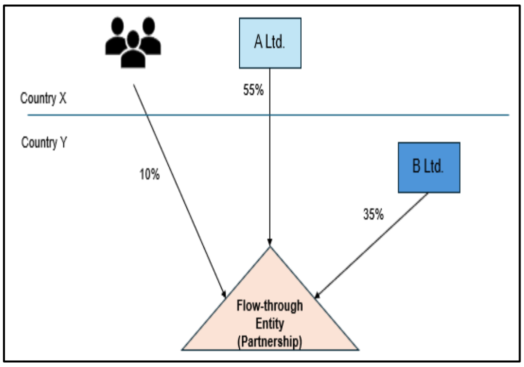
- The payroll carve-out for a CE located in a jurisdiction is equal to 5%[1] of its Eligible Payroll Costs of Eligible Employees that perform activities for the MNE Group in such jurisdiction, except Eligible Payroll Costs that are:
  - capitalized and included in the carrying value of Eligible Tangible Assets
  - attributable to a CE’s International Shipping Income and Qualified Ancillary International Shipping Income under Article 3.3.5 that is excluded from the computation of GloBE Income or Loss for the Fiscal Year.
- “Eligible Employees” includes part-time employees as well as independent contractors operating under the direction and control of the MNE Group.
- “Eligible Payroll Costs” means employee compensation expenditures (including salaries, wages, and other expenditures that provide a direct and separate personal benefit to the employee, such as health insurance and pension contributions), payroll and employment taxes, and employer social security contributions.
- While amount capitalized to tangible assets is excluded from the payroll carve-out

[1] Refer Section D for rates during Transitional Period

amount, such tangible assets do not include inventory.

- Regarding the payroll carve-out of a 'flow-through entity', Eligible Payroll Costs are allocated to the CE-owner in the same proportion as income allocated, provided that the employees are located in the same jurisdiction as the jurisdiction of the CE-owner.

Illustration 1:



An MNE Group comprises of A Ltd., B Ltd., and a partnership as shown in organization structure above.

Payroll costs of the partnership are as follows (all employees posted in Jurisdiction Y):

a. Salaries and wages – 1,000
b. Contractual employees (under own control) – 500
c. Employee insurance – 200
d. Capitalized to inventory – 100
e. Capitalized to tangible assets – 300

Partnership's Eligible Payroll Costs

= (1,000 + 500 + 200 – 300)

= 1,400

Allocation of payroll costs in same proportion as allocation of income –

B Ltd.: (1,400 X 35%) = 490

A Ltd.: No allocation since employees are located in Country Y.

Payroll carve-out for Jurisdiction Y

= 490 * 9.80%[2]

= 48

Payroll carve-out for Jurisdiction X is nil.

Note: No allocation to individuals since they are not considered CEs of the MNE Group.

B. Tangible asset carve-out amount

- The tangible asset carve-out for a Constituent Entity located in a jurisdiction is equal to 5%[3] of the carrying value of Eligible Tangible Assets located in such jurisdiction.
- Eligible Tangible Assets includes:
  - ✓ Property Plant and Equipment
  - ✓ Natural resources
  - ✓ Right-of-use assets under lease
  - ✓ Licence for use of immovable property or exploitation of natural resources
- Eligible Tangible Assets excludes assets held for sale, lease, or investment.
- The tangible asset carve-out computation shall not include the carrying value of tangible assets used in the generation of a CE's International Shipping Income and Qualified Ancillary International Shipping Income.
- 'Carrying Value' of the Eligible Tangible Asset is computed on the basis of average of the carrying value (net of accumulated depreciation but including capitalized amount of payroll expenditure) at the beginning and end of the Reporting FY.
- In case of assets acquired or disposed during the year, the opening or closing balance (as the case may be) should be taken as zero for the purpose of computing the average.
- It needs to be noted that any revaluation gains / losses are disregarded for the purposes of computing the carrying value of the Eligible Tangible Assets.

[2] Transitional rate mentioned in Art. 9 of Model GloBE Rules

[3] Refer Section D for rates during Transitional Period

C. Inter-jurisdictional assets / employees

- The July 2023 Administrative Guidance of the OECD IF introduced a 'more-than-50%' test whereby a CE can claim full SBIE relating to an employee / asset if the same is located in the CE's jurisdiction for more than 50% time.
- Where the 'more-than-50%' test is not satisfied, SBIE needs to be apportioned on proportional time basis.

Illustration 2:

A Co. is an airline company with the following details:

a. 20 employees are part of an international flight crew with payroll costs of 2,000. These employees are in Country A for 4 months and in Country B for 6 months.

b. 30 employees are part of an international flight crew with payroll costs of 3,000. These employees are in Country C for 4 months, Country D for 3 months and in Country E for 5 months.

Given that the first set of employees spend more-than-50% time (> 6 months) in Country B hence, all payroll costs of these 20 employees will be allocated to Country B. However, this is not the case for the second set of employees whose costs need to be apportioned between Jurisdictions, C, D and E in time proportionate basis.

SBIE for Jurisdiction A – Nil

SBIE for Jurisdiction B – 9.80% of 2,000 = 196

SBIE for Jurisdiction C – 9.80% of (3,000 * 4/12) = 98

SBIE for Jurisdiction D – 9.80% of (3,000 * 3/12) = 73.5

SBIE for Jurisdiction E – 9.80% of (3,000 * 5/12) = 122.50

D. Transitional Relief

Transitional Rules have been introduced which require use of following percentages in place of 5% for computing the payroll and tangible asset carve-out:

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 & thereafter	5.00%	5.00%

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 **(26 countries)**
(blue)	Policy framework in place to introduce IIR, QDMTT in 2024 and UTPR in 2025 **(9 countries)**
(peach)	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 **(10 countries)**
(grey)	EU member states opting for delayed implementation **(4 countries)**

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