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GloBE Bulletin

March 2024 - Edition 9

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 require in-scope Multinational Enterprises (MNEs) to perform detailed jurisdictional computations for every jurisdiction where they operate. A critical aspect of the Rules is the treatment of Permanent Establishments (PEs) / branches which are regarded as distinct autonomous Constituent Entities (CEs). In other words, even if an MNE operates in a jurisdiction solely through a PE without any subsidiary presence, the MNE Group is still obligated to conduct thorough GloBE computations for that jurisdiction.

The Model Rules provide detailed guidance on the nature and type of PEs that fall within the scope of the GloBE rules as well as the mechanism for attributing income / expenses from the Main Entity to such PEs. This edition aims to analyse such guidance on a high-level while providing illustrative examples for different scenarios.

This is the ninth 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:

Belgium: On 29 February 2024, Belgian Government submitted changes to Pillar Two law to the Belgian Parliament. The changes encompass amendments related to transfer of tax credits, inclusion / exclusion of certain dividends, domestic top-up taxes, deferred taxes, Safe Harbour Rules, UTPR, and special rules related to blended CFC regimes. The changes would be applicable to fiscal years beginning on or after 1 January 2024.

Greece: On 7 March 2024, the Greek Finance Ministry submitted draft legislation to its Parliament to transpose the EU Minimum Tax Directive into its domestic tax law. This comes after a public consultation process wherein the Ministry of Finance seeked inputs from relevant stakeholders on the Pillar Two GloBE Rules and the proposed legislation. The draft legislation also encompasses an impact assessment that analyses the Pillar Two legislations of several other EU Member States. When enacted, the legislation shall apply the Incom Inclusion Rules (IIR) and Qualified Domestic Minimum Top-up Taxes (QDMTT) for fiscal years beginning on or after 1 January 2024 while the UTPR is expected to be introduced on or after 1 January 2025.

Lithuania: On 13 March 2024, the Government of Lithuania proposed a draft Pillar Two legislation to its Parliament for consideration. This comes after the European Commission instituted formal infringement proceedings against nine Member States (including Lithuania) for not transposing the EU Minimum Tax Directive into their respective domestic tax laws. Although Lithuania has deferred the implementation of the EU Directive until 2030, the draft legislation aims to address reporting obligations.

Malta: On 20 February 2024, the Government of Malta approved the Pillar Two legislation. Although Malta has deferred the implementation of the EU Directive until 2030, the approved legislation aims to address reporting obligations.

Poland: On 26 February 2024, the Polish Government announced its intentions to introduce a draft Pillar Two GloBE Rules legislation into its legislative process in March 2024 which intends to transpose the EU Minimum Tax Directive into domestic legislation. The legislation intends to introduce the GloBE Rules in Poland for fiscal years beginning on or after 1 January 2025.

Thailand: On 1 March 2024, the Revenue Department of Thailand initiated the solicitation of feedback from stakeholders regarding the proposed adoption of the Pillar Two GloBE Rules. The Thai Government intends to utilize 50-70% of the incremental revenue from GloBE Rules to enhance Thailand's competitiveness in select industries. The public consultation closed on 15 March 2024. The legislation is expected to be enacted by the end of 2024 with the IIR, QDMTT and UTPR expected to be introduced from fiscal years beginning on or after 1 January 2025.

UAE: On 15 March 2024, the Finance Ministry of UAE launched a public consultation on the GloBE Rules which solicitates feedback from relevant stakeholders till 10 April 2024. The consultation addresses the scope of the Rules, the charging mechanism, ETR and top-up tax calculations as well as Safe Harbour Rules. UAE is expected to introduce the Rules for fiscal years beginning on or after 1 January 2025.

USA: On 11 March 2024, the Treasury Department of the United States released the Greenbook detailing revenue proposals for the FY 2025 Budget. The Greenbook outlines certain key international tax reform proposals including increasing the GILTI rate from 10.50% to 21% (including increasing corporate tax rate to 28%), eliminating qualified business asset investment, and increasing the corporate alternative minimum tax rate on large corporations from 15% to 21%.

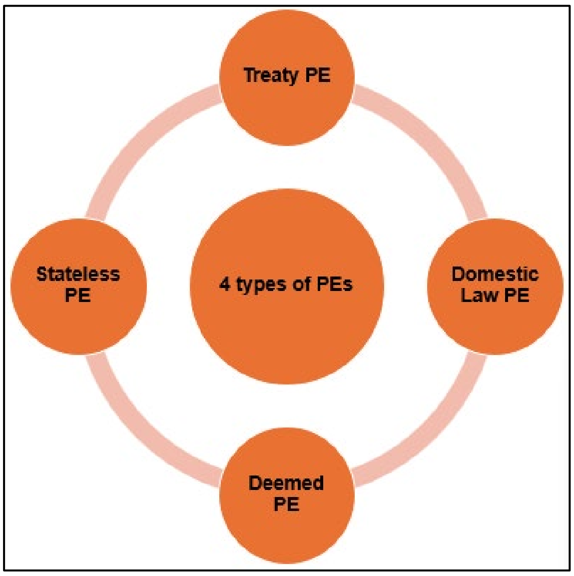
Australia: On 21 March 2024, the Australian Government Treasury published exposure draft legislation to introduce the Pillar Two GloBE Rules into Australian law. Australia is expected to introduce the GloBE Rules effective for fiscal years beginning on or after 1 January 2024.

New Zealand: On March 11, 2024, New Zealand's Parliament's Finance and Expenditure Committee (FEC) presented its report on the Taxation Bill to Parliament which was passed by the Parliament on 28 March 2024. The amendments include adjusting the effective dates for the IIR) and the UTPR to apply from fiscal years beginning on or after 1 January 2025, while the Domestic IIR would take effect from fiscal years beginning on or after 1 January 2026. Furthermore, the amendments clarify that taxes paid under a QDMTT regime are eligible for a foreign tax credit and grant the Commissioner of Inland Revenue the authority to issue binding rulings on Pillar Two matters. The bill must receive Royal Assent to become law.

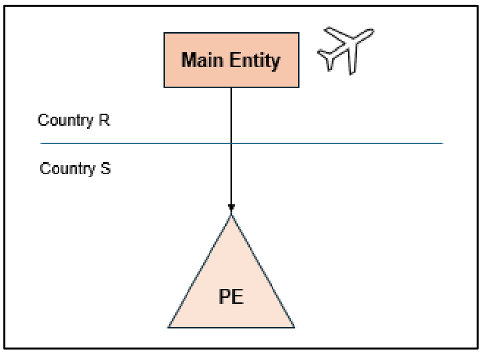
B. Knowledge Bytes:

The Model GloBE Rules require jurisdictional analysis – i.e., all computations are required to be made on a jurisdiction-by-jurisdiction basis wherein relevant attributes of all Constituent Entities (CEs) in a jurisdiction are blended together (other than certain exceptions). Art. 1.3.1 defines a CE as any Entity that is included in a Group and any Permanent Establishment (PE) of such Entity. Furthermore, Art. 1.3.2 states that a PE that is a CE under Art. 1.3.1 shall be treated as separate from the Main Entity and any other PE of that Main Entity. Put differently, PEs are treated as autonomous CEs separate from their Main Entities and their relevant tax attributes are attributed to the jurisdiction of their location for the purposes of the GloBE Rules.

The Model Rules deal with four different types of PEs covered within the definition of PE under Art. 10.1 as follows:



- ### Type (a): Treaty PE
  - **Meaning:** Treaty PE arises when there exists a PE in accordance with the tax treaty between the jurisdiction of the Main Entity and the PE's jurisdiction and the PE's jurisdiction taxes the income attributable to such PE.
  - **Analysis:** This type of PE considers both PEs declared by the taxpayer on a self-assessment basis as well as PEs arising on account of determinations by domestic courts and competent authorities.
  - **Illustration:**



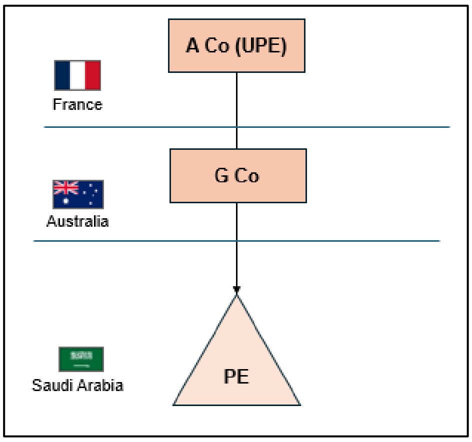
A CE resident in Country R is dedicated to the operation of aircraft in international traffic and has an office in Country S through which it carries on part of its business. The applicable Tax Treaty in force between Country R and Country S follows the OECD Model Tax Convention 2017. In accordance with Article 5 of the Tax Treaty, the CE has a PE in Country S. However, by virtue of Article 7 (4) and Article 8 of the Tax Treaty, Country S is not able to tax the profits of the PE.

In that case, a Treaty PE does not exist for the purposes of the GloBE Rules regardless that it meets the definition of a PE in the applicable Tax Treaty in force.

- ### Type (b): Domestic Law PE
  - **Meaning:** Domestic law PE arises when there exists no tax treaty between the jurisdiction of the Main Entity and the PE's jurisdiction, but the PE arises due to the domestic tax law of the PE jurisdiction which taxes the income attributable to the place of business or deemed place of business on a net basis similar to the manner in which it taxes its own tax residents.

- **Analysis:** Paragraph (b) of PE definition requires that the source jurisdiction taxes the income attributable to a "domestic PE" on a net basis similar to the manner in which it taxes its own tax residents. It does not require that the "domestic PE" is taxed exactly the same as a tax resident, as long as it is taxed in a similar manner. For instance, a "domestic PE" would be taxed in a similar manner as a tax resident in the source jurisdiction regardless that the deductibility of its expenses is subject to further limitations not applicable to resident taxpayers. Furthermore, the taxable income must be attributable to the "domestic PE", which means that activities have to be carried out through it in the source jurisdiction. Finally, this condition excludes from paragraph (b) any source taxation based on a gross basis (e.g. a withholding tax).

- **Illustration:**
  Example I

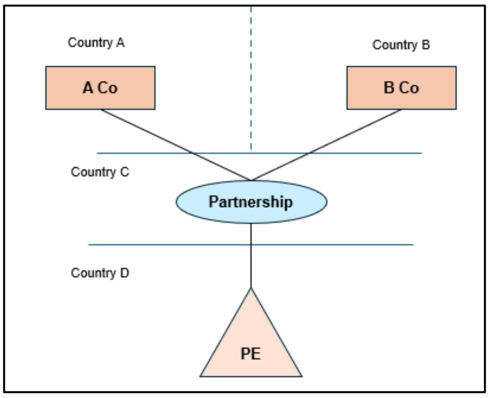


G Co is a CE resident in Australia that is having a place of business in Saudi Arabia. A Co is the Ultimate Parent Entity (UPE) of G Co and is resident in France. Between France and Australia and between France and Saudi Arabia, an applicable Tax Treaty is in force. Australia and Saudi Arabia have not entered into a Tax Treaty (Income and Capital Tax). Relevant fact is whether the jurisdiction of the PE (i.e., place of business) and the jurisdiction of the next higher company in line (G Co) have entered into a Tax Treaty.

In this case, the GloBE Rules follow the domestic law of Saudi Arabia by taxing the PE according to the domestic law of Saudi Arabia. The domestic Law of Saudi Arabia states that income derived from a PE owned by a non-resident is subject to income tax in Saudi Arabia starting with the first day of the business activity in Saudi Arabia.

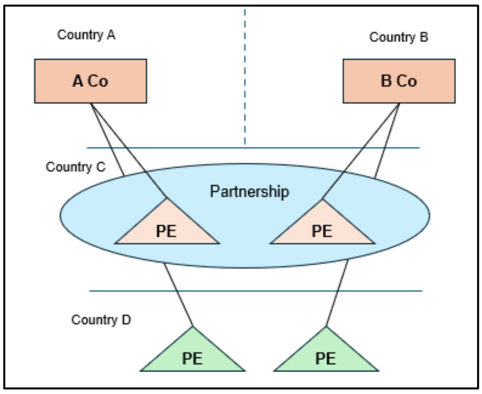
The fact that the jurisdiction of the UPE and the jurisdiction of the PE have a Tax Treaty in force, is irrelevant.

Example II



A Co and B Co are CEs resident in Country A and Country B respectively, and the sole partners of a partnership organized in Country C. Under the domestic law of Country C, the partnership is considered as tax transparent, and A Co and B Co are treated as having a PE in Country C. The partnership further has a PE in Country D according to domestic law of country D. Country D also treats the partnership as transparent in its domestic law.

In this case, the GloBE Rules follow the domestic law of Country C by recognizing the existence of the two PEs as two separate CEs. Additionally, there are two further PEs in Country D, which are considered as CEs according to the GloBE Rules.

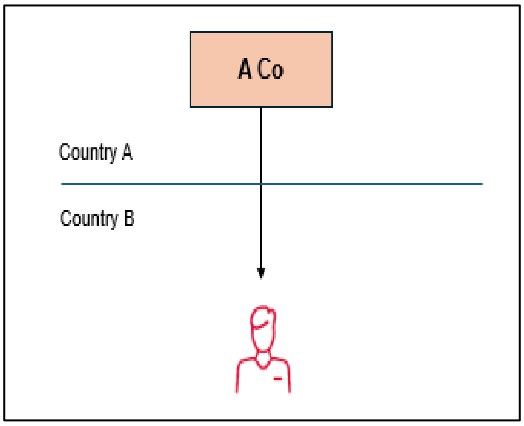


- **Type (c): Deemed PE**
  - **Meaning:** If a jurisdiction lacks a corporate income tax system, any place of business (including a deemed place of business) located within that jurisdiction, which would be considered a PE according to the OECD Model Tax Convention on Income and on Capital, provided that such jurisdiction would have had the authority to tax the income attributable to it under Article 7 of that model, is termed a 'deemed PE'.
  - **Analysis:** Deemed PE requires a hypothetical analysis of whether a PE would have existed in the jurisdiction with no CIT system (referred as the "source country"). The analysis proceeds as if the residence and source country had a treaty that replicates the last version of the OECD Model Tax Convention. This means that it takes into account the version of the OECD Model Tax Convention of the year in which this analysis is made.
  - **Illustration:** A CE located in Country A does not have a PE in the source country during the years 1 to 4 in accordance with the OECD Model Tax Convention. In year 5, the model is modified in a way that creates a PE in the source country. In this case, Deemed PE criterion is met in year 5.

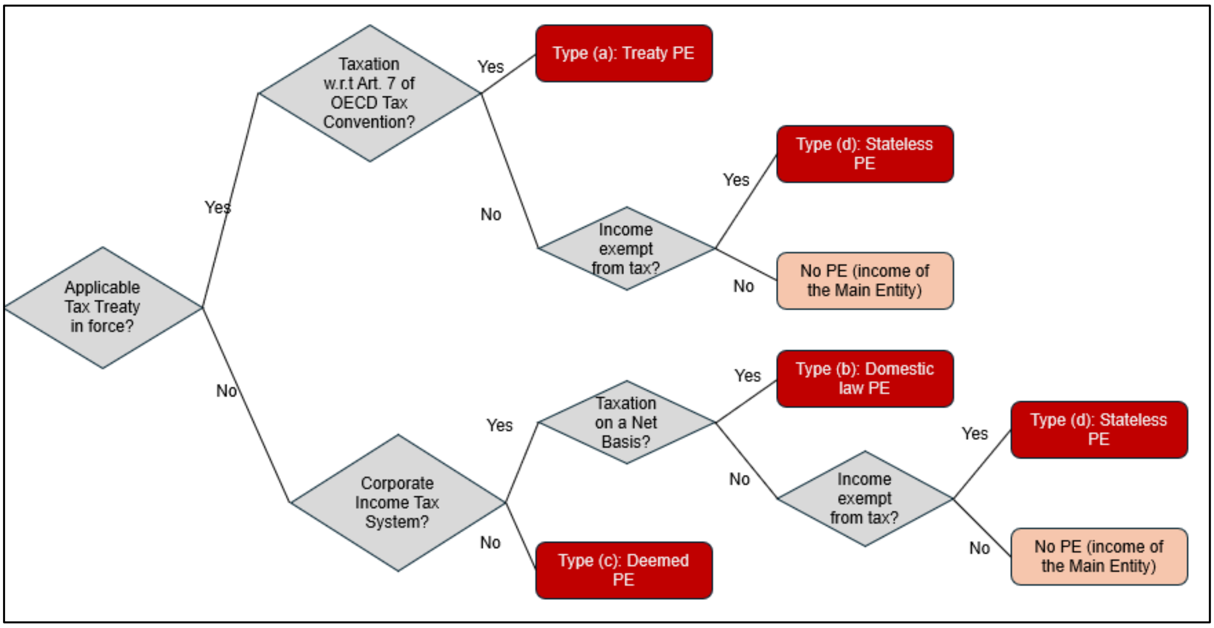
- **Type (d): Stateless PE**
  - **Meaning:** A Stateless PE exists when the Main Entity's jurisdiction exempts profits attributable to the PE even though the PE's jurisdiction does not recognise the PE for national law or tax treaty purposes.
  - **Analysis:** Stateless PE arises only when the PE does not meet the criteria of a Treaty PE / Domestic law PE / Deemed PE. Furthermore, it is irrelevant if the jurisdiction where the Main Entity is located considers the existence of a place of business (or deemed place of business) in another jurisdiction or if one exists in accordance with domestic law of a source jurisdiction or tax treaties The requirement for Stateless PE is that such jurisdiction is exempting the income generated through foreign operations. It needs to be noted that Stateless PE only applies where exemption is attributable to the fact that the operations are treated as conducted by the CE outside the jurisdiction. For example, if a shareholder of a foreign subsidiary benefits from a foreign dividend exemption (e.g., participation exemption), Stateless PE would not be triggered because the income is not exempted on the grounds that the shareholder is carrying out operations in the other jurisdictions related to the dividend.
  - **Illustration:** A Co is located in Country A and conducts activities in Country B through a person that habitually

concludes contracts in the name of A Co. Country A and Country B do not have a Tax Treaty. Country A exempts the income earned by A Co through the Dependent Agent. However, Country B does not treat an agent that habitually concludes contracts in name of its principal as a Dependent Agent PE.

In this case, the PE would be stateless for the purposes of the GloBE Rules meaning that the income of the PE would be subject to the GloBE Rules on a standalone basis without the ability to blend its income with other CEs located in Country B.



- ## Decision Tree



- ## Computation of GloBE income / loss

A PE is a tax rather than an accounting concept. Accordingly, financial accounting information may not always be separately maintained in respect of the PE. In many cases, however, separate accounts may be maintained either for management purposes or to comply with local tax rules. Given that the GloBE Rules primarily rely on accounting information rather than management accounts or local tax information, Art. 3.4 ensures that the right amount of Financial Accounting Net Income or Loss (FANIL) is allocated between the PE and the Main Entity. In making this allocation, the accounting treatment is followed as far as possible. This is subject, however, to the income and expense allocation rules under a Tax Treaty or domestic law.

A. PE (other than Stateless PE):

- **FANIL:** The FANIL of a PE (other than a Stateless PE) is the net income or loss reflected in the separate financial accounts of the PE. If the PE does not have separate financial accounts, then the FANIL is the amount that would have been reflected in its separate financial accounts if prepared on a standalone basis and in accordance with the accounting standard used in the preparation of the Consolidated Financial Accounts of the UPE.

- **Adjustments for Treaty PE / Domestic Law PE:** The FANIL is adjusted to reflect only the amounts and items of income and expense that are attributable to the PE in accordance with the applicable Tax Treaty or domestic law of the jurisdiction where it is located regardless of the amount of income subject to tax and the amount of deductible expenses in that jurisdiction.
  For Treaty PEs, Article 7 of the OECD Model Tax Convention provides that items are to be attributed to a PE by treating the PE as a separate entity and by taking into account its functions performed, assets used, and risks assumed.
  For Domestic law PEs, the FANIL needs to be adjusted to reflect the amounts and items of income / expenses that are attributable to the PE in accordance with domestic law.

- **Adjustments for Deemed PE:** The FANIL of a Deemed PE needs to be adjusted to reflect only the amounts and items of income and expense that would have been attributed to it in accordance with Article 7 of the OECD Model Tax Convention.

- **Illustration:** A Co. is a CE located in Country A that has a PE in Country B in accordance with the applicable Tax Treaty in force between Country A and Country B. 100 of business profits are attributable to the PE which are derived from royalties. There are no deductible expenses. Country B exempts 50% of the royalties.
  In this case, the amount of income considered for the purpose of determining the FANIL of the PE is 100, notwithstanding that the PE is taxed only with respect to 50.

B. Stateless PE: The income used for computing the FANIL of a Stateless PE is the income being exempted in the jurisdiction where the Main Entity is located and attributable to the operations conducted outside that jurisdiction. The expenses used for computing FANIL are those that are not deducted for taxable purposes in the jurisdiction where the Main Entity is located and that are attributable to such operations.

• GloBE Loss of a PE

A GloBE Loss of a PE shall be treated as an expense of the Main Entity (and not of the PE) for purposes of computing its GloBE Income or Loss to the extent that the loss of the PE is treated as an expense in the computation of the domestic taxable income of such Main Entity and is not set off against an item of income that is subject to tax under the laws of both the jurisdiction of the Main Entity and the jurisdiction of the PE. GloBE income subsequently arising in the PE shall be treated as GloBE Income of the Main Entity (and not the PE) up to the amount of the GloBE Loss that previously was treated as an expense for purposes of computing the GloBE Income or Loss of the Main Entity.

• Computation of Adjusted Covered Taxes

The amount of any Covered Taxes included in the financial accounts of a CE with respect to GloBE Income or Loss of a PE is allocated to the PE. Where the GloBE Income of a PE is treated as GloBE Income of the Main Entity pursuant to Art. 3.4.5., any Covered Taxes arising in the location of the PE and associated with such income are treated as Covered Taxes of the

Main Entity up to an amount not exceeding such income multiplied by the highest corporate tax rate on ordinary income in the jurisdiction where the Main Entity is located.

Conclusion

Allocation of GloBE income or loss and Covered Taxes for PEs requires a sophisticated analysis, including careful study of tax treaties, domestic laws, transfer pricing methods, and the Model GloBE Rules. These analyses become all the more critical in case of businesses which are increasingly digitalised like financial services (banking, insurance, etc.) which would entail subjective determinations.

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 **(7 countries)**
(orange)	Policy framework in place to introduce IIR, QDMTT and UTPR in 2025 **(8 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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