



# 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.

The Model GloBE Rules require in-scope Multinational Enterprises (MNEs) to perform detailed jurisdictional computations for every jurisdiction where they operate. Given that there exists diverse accounting and tax practices across the different countries where MNEs operate, the Model GloBE Rules provide a variety of elections to reconcile the disparities and promote harmonisation among the diverse practices.

The elections further aim to provide compliance simplification for in-scope MNEs by offering flexibility in certain aspects of the computation mechanism. This edition aims to provide a high-level overview of certain key elections that directly impact the scope of the Rules, and the income and tax computations. It also aims to provide the rationale of such elections to help foster understanding among the stakeholders.

This is the tenth 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. Knowledge Bytes:

Different countries across the world follow different accounting and tax practices. The GloBE Rules offer certain elections within the computation mechanism thereby providing MNEs with the flexibility to reconcile the disparities among the diverse accounting and tax practices followed across multiple jurisdictions. This edition of our GloBE Bulletin focuses on certain key elections provided within the GloBE framework.

The Model Rules contain the following elections:

- a. Excluded Entity election (Art. 1.5.3)
- b. Stock-based compensation election (Art. 3.2.2)
- c. Realisation method election (Art. 3.2.5)
- d. Election to spread capital gains over five years (Art. 3.2.6)
- e. Election to consolidate transactions in same jurisdiction (Art. 3.2.8)
- f. Unclaimed accrual election (Art. 4.4.7)
- g. GloBE Loss election (Art. 4.5)
- h. Prior year adjustment election (Art. 4.6.1)
- i. Substance based income exclusion election (Art. 5.3)
- j. De minimis exclusion election (Art. 5.5)
- k. Deemed disposal of assets election (Art. 6.2)
- l. Fair Value basis adjustment election (Art. 6.3.4)
- m. Distribution tax regime election (Art. 7.3.1)
- n. Tax Transparency election (Art. 7.5)
- o. Taxable Distribution method election (Art. 7.6)
- p. Safe Harbour election (Art. 8.2)

In this edition, we have covered certain critical elections which directly impact the GloBE income and Adjusted Covered Taxes computation.

### Article 1 – Scope

#### • Excluded Entity Election (1.5.3)

- **Election:** Art. 1.5.2 of the Model Rules provides that, certain entities like

governmental entities, international organisations, non-profit organisations, pension funds, investment funds or real estate investment vehicles (which are Ultimate Parent Entities (UPEs)) are considered as excluded entities for GloBE purposes even if they are part of an in-scope MNE Group. Art. 1.5.3 of the Model Rules, however, provides an election to a filing CE to not treat an entity covered under Art. 1.5.2 as excluded entity and rather subject the same to GloBE Rules.

- **Period:** Filing CE can make this election in any fiscal year, and it applies for five years.
- **Rationale:** The top-up tax collection mechanism under the GloBE Rules comprises of the IIR and UTPR. While the IIR gives the parent entity the right to collect tax, any uncollected tax gets covered under the backstop rule of UTPR and is collected by the jurisdictions of other CEs of the MNE Group. An MNE Group with a UPE that is an Investment Fund which is an Excluded Entity, but which, consolidates on a line-by-line basis with its subsidiaries may make this election such that the Entity can apply the IIR to its subsidiaries instead of subjecting all of its CEs to the UTPR.

### Article 3 – GloBE Income

#### • Stock-based compensation (3.2.2)

- **Election:** Art. 3.2.2 allows the substitution of stock-based compensation expense allowed for local jurisdiction's tax purposes for the amount expensed in financial accounts.
- **Period:** Filing CE can make this election in any fiscal year, and it applies for five years.
- **Conditions:** The election is essentially made on a jurisdictional basis and thus



can be made for some jurisdictions and not other jurisdictions. Must be applied consistently to the stock-based compensation expense of all CEs located in the same jurisdiction and for the year in respect of which the election is made and all subsequent Fiscal Years, unless and until the election is revoked.

– **Analysis:**

- If the election is made in respect of an option that expires without exercise, the CE must treat the amount previously included as an expense in the computation of the GloBE Income or Loss pursuant to the election as additional income under the GloBE Rules.
- If the election is made in a Fiscal Year after some of the stock-based compensation expense of a transaction has been recorded in the financial accounts but before the exercise date, the CE must recapture the stock-based compensation expense allowed in the computation of its GloBE Income or Loss in previous Fiscal Years to the extent it exceeds the amount of the tax deduction that would have been allowed in respect of that compensation in previous Fiscal Years.

- **Revocation:** If the election is revoked, the CE must include in the computation of its GloBE Income or Loss for the revocation year the amount deducted pursuant to the election that exceeds financial accounting expense accrued in respect of the stock-based compensation that has not been paid. It needs to be noted that revocation of the election only affects stock-based compensation expense for which the final tax deduction has not been determined; it does not affect the

amount allowed as a deduction in respect of options that have already been exercised.

- **Rationale:** Financial accounting generally allows a company to account for stock-based compensation expense based on the present value of the options at the time of issuance and to further spread it over the vesting period. However, tax laws in certain countries may allow full value of stock-based compensation expense to be deducted in a single tax period or based on the value of stock option at the date of exercise (which could be different from the value on grant date). This election therefore gives the MNE Group the flexibility to harmonise the GloBE calculations with the local tax computations.

• **Realisation method election (3.2.5)**

- **Election:** Article 3.2.5 provides an election to use the realisation method for assets and liabilities that are accounted for in the CE's financial accounts using the fair value method or impairment accounting. Consequently, gain or loss associated with an asset or liability will arise when the asset is disposed rather than as its value changes due to changes in market value or impairments.
- **Period:** Filing CE can make this election in any fiscal year, and it applies for five years.
- **Conditions:** The election generally applies with respect to all assets and liabilities of all CEs in a jurisdiction. However, the election can be limited to tangible assets of such CEs or to assets and liabilities of such CEs that are Investment Entities.
- **Analysis:** The carrying value of an asset or liability for purposes of determining gain or loss shall be its



carrying value at the later of the first day of the election year, or the date the asset was acquired or liability was incurred.

- **Revocation:** In the year an election under this Article is revoked, the GloBE Income or Loss is adjusted by the difference between the fair value of the asset or liability at the beginning of the year and the carrying value of the asset or liability determined pursuant to the election. This adjustment recaptures the net fair value gain or loss that arose during the pendency of the Article 3.2.5 election. It needs to be noted that Art. 3.2.5 election cannot be revoked within five Fiscal Years after an Election Year and another election cannot be made within five Fiscal Years after a revocation year.
- **Rationale:** The policy justification for this treatment is to reduce volatility by allowing the taxpayer to crystallise the gain for GloBE purposes as of the actual date of disposition rather than from one period to the next in line with the accounting treatment. Furthermore, this election becomes critical for those jurisdictions where local tax rules follow real income theory and do not tax mark-to-market gains. In such cases, if a CE does not opt for this election, then it may end up with an addition to its GloBE income for revaluation gain without a corresponding addition in its covered taxes.
- **Election to spread capital gains over five years (3.2.6)**
  - **Election:** Art. 3.2.6 provides an election that permits an MNE Group to spread the effect of gains and losses from the sale of Local Tangible Assets over a period of up to five years.
  - **Period:** The election is an Annual Election made on a jurisdictional basis.
  - **Conditions:** This election applies only with respect to gains and losses attributable to disposition of Local Tangible Assets, defined in Article 10.1 as immovable property located in the same jurisdiction as the CE. When the election is made, any Covered Taxes (including deferred tax assets) with respect to any Net Asset Gain or Net Asset Loss in the Election Year must be determined based on the facts and circumstances and excluded from the computation of Adjusted Covered Taxes.
  - **Mechanism:** The Aggregate Asset Gain is the net gain in the Election Year from the disposition of Local Tangible Assets by all CEs located in the jurisdiction except for gain or loss on a transfer of assets between Group Members. The Aggregate Asset Gain is first matched against Net Asset Losses arising during the Look-back Period (Election Year and four prior Fiscal Years), starting with the earliest Loss Year in the period. If the Aggregate Asset Gain is not fully absorbed in the earliest Loss Year, the balance is brought forward to the next Loss Year, and so on, until the Aggregate Asset Gain is fully absorbed or there are no remaining Loss Years in the Look-back Period. If there is an amount of Aggregate Asset Gain in excess of the Net Asset Losses in the Loss Years of the Look-back Period, that excess is spread evenly (i.e. pro-rated) over the Look-back Period and then allocated among CEs based on their respective Net Asset Gains in the Election Year. Finally, the Effective Tax Rate (ETR) and Top-up Tax, if any, for each previous Fiscal Year in the Look-back Period must be re-calculated under Article 5.4.1.



- ✓ **Rationale:** The policy justification for this election is that the increase in value of the asset likely accumulated over a period of years and spreading the gain over that period, up to a maximum of five years, and matching it with losses from similar property provides a better measure of whether the MNE Group has been subject to a minimum level of tax in the jurisdiction over that period.
- **Election to consolidate transactions in same jurisdiction (3.2.8)**
  - **Election:** Art. 3.2.8 provides an election that permits consolidated accounting treatment to be applied to transactions between CEs of the same MNE Group located in the same jurisdiction.
  - **Period:** Filing CE can make this election in any fiscal year, and it applies for five years.
  - **Mechanism:** If this election is made, income, expenses, gains and losses resulting from transactions between the CEs may be eliminated from the computation of GloBE Income or Loss in the same manner as amounts relating to transactions among members of a consolidated group are eliminated as part of the consolidation adjustments under the Acceptable Financial Accounting Standard used by the UPE in preparing its Consolidated Financial Statements.
  - **Rationale:** This election is intended to prevent unintended consequences where income, expense, gains and losses from domestic intra-group transactions are treated as tax neutral intra-group transactions under local law.
- **Period:** Election under Art. 4.4.7 is an Annual Election.
- **Rationale:** The Model Rules allow the inclusion of deferred taxes for the computation of Adjusted Covered Taxes. By nature, deferred tax liabilities (DTL) increase the ETR and in order to ensure that MNE Groups do not artificially increase their ETR using DTL, the Rules introduce the concept of deferred tax recapture, whereby if any DTLs that do not reverse within five years are recaptured leading to recomputation of ETR and TUT for the year in which such DTL was created. This election provides compliance simplification in scenarios where a MNE Group expects a DTL to not reverse within five years.

- **GloBE Loss Election (4.5)**

- **Election:** Art. 4.5 provides an elective rule to effectively carry GloBE losses forward with a deemed deferred tax asset.
- **Period:** The GloBE Loss Election must be filed with the first GloBE Information Return of the MNE Group that includes the jurisdiction for which the election is made.
- **Mechanism:** Article 4.5.1 establishes a deemed deferred tax asset at the Minimum Rate (15%) when there is a Net GloBE Loss for a jurisdiction in a Fiscal Year. This GloBE Loss Deferred Tax Asset may be carried forward and used in any subsequent Fiscal Year in which there is GloBE Income for the jurisdiction. When a GloBE Loss Deferred Tax Asset is used in a subsequent Fiscal Year, the amount of GloBE Loss Deferred Tax Asset is added to Covered Taxes.

## Article 4 – Adjusted Covered Taxes

- **Unclaimed accrual election (4.4.7)**
  - **Election:** Art. 4.4.7 allows the exclusion of any deferred tax liability that is not



- **Revocation:** If the GloBE Loss Election is subsequently revoked, any remaining GloBE Loss Deferred Tax Asset is reduced to zero.
  - **Rationale:** By allowing MNEs to create GloBE Loss Deferred Tax Assets on GloBE Losses, the Model Rules offer simplification by allowing the MNEs to benefit from utilisation of losses, thereby resulting in actual economic gains being subject to tax.
- **Prior year adjustment election (4.6.1)**
- **Election:** Any prior year adjustment involving decrease in covered taxes is required to be given effect by recomputing the ETR and TUT for the respective year to which the reduction pertains. Art. 4.6.1 however, provides an election whereby “immaterial” decreases to covered taxes can be adjusted in the current year itself.
  - **Period:** Election under Art. 4.6.1 is an Annual Election.
  - **Mechanism:** An immaterial decrease is defined as an aggregate decrease of less than EUR 1 million in the Adjusted Covered Taxes determined for the jurisdiction for a Fiscal Year.
  - **Rationale:** To provide compliance simplification to in-scope MNE Groups from having to undertake burdensome recomputations for ‘immaterial’ adjustments.

In-scope MNEs need to carefully evaluate their existing accounting and tax practices to make informed decisions for the respective elections. This could involve performing scenario analysis and analysing future projections to ascertain the impacts of different outcomes.



## B. Country Updates:

**Estonia:** On 10 April 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.

**Greece:** On 4 April 2024, Greece enacted legislation to transpose EU Directive, and implemented Pillar Two in its domestic law. It also published the legislation in its Official Gazette on 5 April 2024. As per legislation, Greece is set to introduce the Income Inclusion Rule (IIR) and Qualified Domestic Minimum Top-up Tax (QDMTT) starting from the fiscal years beginning on or after 31 December 2023, with the UTPR being applicable from fiscal years beginning on or after 31 December 2024.

**Poland:** On 25 April 2024, the Polish Ministry of Finance (MoF) published a draft bill which aims to transpose the EU Minimum Tax Directive into Polish national law. Upon legislation, the law would take effect from fiscal years beginning on or after 1 January 2025. Presently, the draft bill is open for public consultation from stakeholders till 17 May 2024. It needs to be noted that Poland was among the nine EU Member States against whom the European Commission had initiated infringement proceedings for delaying the implementation of the EU Minimum Tax Directive.

**New Zealand:** On 27 March 2024, the New Zealand Parliament passed its Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill, which also includes legislation to implement Pillar Two GloBE Rules. According to the legislation, IIR and UTPR will apply to both domestic and foreign entities starting from fiscal years beginning on or after 1 January 2025. However, New Zealand has introduced a Domestic Income Inclusion Rule (DIIR) which will only apply to New Zealand headquartered MNEs from fiscal years beginning on or after 1 January 2026. The DIIR

therefore is different in scope vis-à-vis a QDMTT. The New Zealand legislation aims to provide foreign tax credits in New Zealand for payments made under a QDMTT, but not for payments made under an IIR or UTPR. Payments made under DIIR, on the other hand, shall be eligible for imputation credits.

**OECD:** On 25 April 2024, the OECD published updated consolidated commentary on the Pillar Two GloBE Rules and provided consolidated practical examples for the GloBE framework. The updated commentary consolidates the initial commentary released in March 2022 along with the three subsequent Administrative Guidances issued in February 2023, July 2023, and December 2023 and Safe Harbour rules issued in December 2022. Similarly, the updated document on examples consolidates the initial examples released in March 2022 with the subsequent examples shared within the Administrative Guidances. The consolidated documents on commentary and examples offer convenience to stakeholders of having the commentary and administrative guidance at a single place for ease of reference and application. Interestingly, the OECD has mentioned that it shall come out with fourth tranche of Administrative Guidance before the second half of 2024 which is likely to introduce guidance on a variety of issues, including the cross-border allocation of current and deferred taxes.



## 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
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### Legend

	Formal adoption of GloBE Rules from 2024 <b>(26 countries)</b>
	Policy framework in place to introduce IIR, QDMTT in 2024 and UTPR in 2025 <b>(6 countries)</b>
	Policy framework in place to introduce IIR, QDMTT and UTPR in 2025 <b>(9 countries)</b>
	Written declaration to implement GloBE Rules though timelines are uncertain <b>(10 countries)</b>
	EU member states opting for delayed implementation <b>(4 countries)</b>

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