



Dhruva publications are designed to assist readers to keep abreast with latest news, developments and tax issues that concern businesses. It is our endeavour to 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.

**On 17 June 2024, the OECD Inclusive Framework (OECD IF) issued two documents on the Pillar Two GloBE Rules –**

- a. Fourth Administrative Guidance (June 2024 AG) clarifying and simplifying the application of the global minimum tax, and
- b. A Q&A format document providing an overview of the process to provide qualified status for the legislation issued by implementing jurisdictions.

**As more and more jurisdictions across the globe keep adopting the Rules, these Administrative Guidance become critical for stakeholders by providing relevant clarifications and administrative simplifications to enable smooth implementation of the Rules.**

This is the twelfth 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:

### June 2024 AG

The GloBE Rules were initially published in December 2021 which were followed by a detailed commentary issued in March 2022. Thereafter, three sets of Administrative Guidance were issued in February 2023, July 2023, and December 2023. Such Administrative Guidance were later consolidated, and a Consolidated Commentary was issued in April 2024. However, it seems the clarifications continue to come as fourth set of Administrative Guidance is now issued by the OECD IF which offers guidance on following important topics:

#### 1. Deferred Tax Liability (DTL) Recapture

As per the OECD Model Rules, any DTL that does not reverse within five subsequent fiscal years after the year of origination, is required to be recaptured. It means that the Effective Tax Rate (ETR) of such previous year (when such DTL was created) needs to be recomputed without such DTL and additional top-up tax if any is required to be discharged by the MNE Group. The Rules do provide certain categories of DTL that fall within DTL recapture exceptions for which an MNE Group need not test for recapture. These broadly relate to certain common temporary differences which are less likely to be susceptible to be manipulated for tax evasion.

Given that financial accounting practices do not require in-scope MNEs to recapture DTLs, many stakeholders had raised concerns on the significance compliance burden that DTL Recapture rule would impose – both in terms of having to track DTLs on an item-by-item basis as well as to re-compute the ETR for respective previous fiscal years. In response to such concerns, the June 2024 AG provides administrative simplification for the recapture of DTLs by allowing MNE Groups to track DTLs on an aggregate basis.

The AG allows such aggregation to be done on a 'General Ledger account' (GL account) basis whereby DTLs pertaining to all assets and liabilities mapped to a GL account to be tracked as a group. Furthermore, the June 2024 AG also provides another simplified approach of 'Aggregate DTL Category' basis which allows multiple GL accounts of similar categories of DTLs to be aggregated together (excluding non-amortizable intangible assets, amortizable intangible assets with an accounting life of more than five years, and related party receivables and payables). However, it needs be noted that this simplification does not permit aggregation of GL accounts which create DTAs with GL accounts which create DTLs.

June 2024 AG also prescribes methodologies to ascertain the timing and amount of recapture pertaining to respective DTL categories. In this regard, it has been clarified that MNEs need not track DTL categories which comprise only short-term DTLs (i.e., generally expected to reverse within five years), provided the same can be substantiated with adequate documentation and facts of the matter. However, for other categories, the AG prescribes the use of a 'first-in-first out' (FIFO) or 'last-in-first-out' method along with regulations for the application of either methods.

It has also been clarified that where an Aggregated DTL category is not expected to be reversed within subsequent five fiscal years, an MNE Group could elect to treat it as an Unclaimed Accrual and consequently, would not be required to track the same for recapture. Such a DTL category shall be considered as accrued in the Adjusted Covered Taxes of the year in which it is paid / reversed.

#### 2. Divergence between GloBE and accounting carrying values

June 2024 AG clarifies that there could be situations where GloBE Income or Loss is based on a carrying value of any asset / liability that differs from the financial accounting carrying



value and that, in such circumstances, deferred tax assets and / or liabilities should be generally determined using the GloBE carrying values in accordance with the relevant accounting standard of the Ultimate Parent Entity (UPE).

Such variations in carrying values could arise, for example, in case of adjustments for accrued pension expenses, stock-based compensation, transfer pricing adjustments, realisation principle accounting, and certain adjustments pertaining to transfer of assets / liabilities or purchase accounting. This could, in fact, lead to a situation where GloBE carrying value differs from both the local tax carrying value as well as the financial accounting carrying value, and in such a case, an MNE Group might be required to record a deferred tax solely for GloBE purposes.

June 2024 AG provides the example of a cross-border transfer of asset wherein the transfer is recorded at historical carrying value for accounting purposes but has a tax basis equivalent to the fair market value at the time of transfer. Now, by virtue of Art. 3.2.3, GloBE carrying value is equivalent to the fair market value and where the accounting standard of the UPE or other relevant accounting standard for GloBE purposes follows an accounting amortisation schedule which aligns with the tax amortisation schedule, then no deferred taxes would arise for GloBE purposes.

### **3. Allocation of Cross-border Current Taxes**

The Rules require the computation of jurisdictional ETR which in turn requires the aggregation of relevant attributes of all entities of an MNE Group in a jurisdiction including those of Permanent Establishments (PEs). June 2024 AG issues additional guidance on the mechanism of allocating Current Taxes of a Main Entity where such entity earns foreign income from multiple sources and jurisdiction of such entity allows 'cross-crediting' of foreign taxes.

In this regard, June 2024 AG prescribes a four-step mechanism to allocate tax expenses against the income of respective CEs:

- The first step ascertains the Main Entity's total net foreign source income including income of PEs, CFCs, Hybrid Entities and Reverse Hybrid Entities.
- The second step requires the computation of Main Entity's allocable Covered Taxes by deducting tax on domestic source income and Blended CFC Taxes from the total current tax expense of the Main Entity.
- The third and fourth steps require the development of relevant allocation keys for respective PEs and CFCs, and subsequent allocation of allocable Covered Taxes basis the allocation keys.

Furthermore, June 2024 AG also elucidates the allocation of taxes to respective CEs under the foreign tax credit (FTC) rules of the Main Entity. The AG clarifies that additional taxes paid by the Main Entity, resulting from the allocation of the Main Entity's expenses against the foreign source income of another entity when calculating the FTC limitation, will be included in the Main Entity's ETR calculation and will not be allocated to another CE.

Clarification has also been provided regarding treatment of losses arising from a PE in accordance with the domestic law of Main Entity, thereby implying that losses arising from a PE could be offset against the profits of another PE, instead of the Main Entity in certain cases. However, it needs to be noted that the mechanism for allocation of taxes related to a Blended CFC Tax Regime stipulated under the temporary simplified allocation methodology (applicable for FYs beginning before 2026) remains unimpacted.



#### **4. Allocation of Cross-border Deferred Taxes**

June 2024 AG prescribes a five-step mechanism to allocate deferred CFC taxes from a Parent Entity to its CFC with similar rules applying for PEs, Hybrid entities and Reverse Hybrid entities. Also, a Five-Year Election may be opted in the Main Entity's jurisdiction to ignore the allocation of all deferred taxes w.r.t PEs, CFCs, and Hybrid Entities arising in such jurisdiction.

Allocation of deferred taxes related to Blended CFC Tax Regimes, such as GILTI deferred taxes are not covered in the June 2024 AG. GILTI deferred taxes are not allocated under Art. 4.3 of the Model Rules and therefore, taken into computation when they reverse to become Current Tax.

The five-step mechanism is broadly outlined below –

- Step 1: Segregation of Main Entity's deferred taxes into three categories, such as those related to non-GloBE Income, Passive GloBE Income, and non-Passive GloBE Income.
- Step 2: Calculation of pre-FTC deferred tax and expected FTCs
- Step 3: Allocation of net deferred taxes pertaining to non-GloBE Income to respective CFC CE for exclusion from Covered Taxes.
- Step 4: Allocation of deferred tax w.r.t non-Passive GloBE Income to respective CFC CE
- Step 5: Allocation of deferred tax w.r.t Passive income to respective CFC CE in lines with Art. 4.3.3 limitation on allocation of taxes to Passive income. Remaining CFC taxes are allocated to the Main Entity.

#### **5. Allocation of profits and taxes in structures including Flow-through Entities**

A Flow-through Entity (FTE) is one which is fiscally transparent with respect to its income, expenditure, profit or loss in the jurisdiction where it is created. June 2024 AG clarifies that an entity is treated as FTE by reference to how it is treated under the tax laws of the closest owner which is not an FTE (Reference Entity). This could potentially lead to different classifications of an entity under the GloBE Rules where such entity has multiple owners in different jurisdictions.

Furthermore, it is clarified that a jurisdiction's tax laws must conclusively provide for an entity's treatment as fiscally transparent for it to be treated as FTE – mere presence in a jurisdiction that has no corporate tax system does not grant an FTE status to an entity. Also, the AG clarifies that GloBE Income of an FTE is not allocable to a non-MNE Group member where such interest is held (directly or indirectly) through the UPE.

June 2024 AG also provides guidance pertaining to allocation of profits and taxes in case of Hybrid Entities and Reverse Hybrid Entities so as to conform to the matching principle of aligning taxes with related income for computation of jurisdictional ETR.

#### **6. Treatment of Securitisation Vehicles**

A securitisation vehicle is a special-purpose entity created to pool various financial assets and issue securities backed by those assets. June 2024 AG provides two options as regards application of QDMTT to securitisation vehicles:

- A. Exclude a Securitisation Entity from the scope of its QDMTT or
- B. Allocate top-up tax liabilities attributable to securitisation vehicles among other entities of the Group.

While the first option could lead to a jurisdiction not qualifying for the QDMTT Safe Harbour, the second alternative may not lead to such a consequence.



## 7. Way Forward

As MNEs initiate the process of implementing the GloBE Rules in its first effective year i.e. 2024, more practical issues set to emerge requiring OECD IF to pitch in frequently and provide relevant clarifications through additional guidance. The stakeholders should also watch out for more OECD IF Guidance later this year on Transitional CbCR Safe Harbours, Substance-based Income exclusion, dispute resolution, and Permanent Safe Harbours.

While the June 2024 AG does introduce important clarifications, it however cannot be denied that these clarifications do introduce certain complexities for relevant stakeholders.

### Q&A Document on Qualified Status

The Q&A document outlines a peer review process to certify the Qualified Status of jurisdictions' implementation of the GloBE Rules. The process involves a Transitional Qualification Mechanism which is based on self-certification by an implementing jurisdiction that its legislation achieves consistent outcomes with the key provisions of the GloBE Rules. Such self-certification is provided to the OECD Secretariat which is further on-shared with the IF members. Where no questions are received or if questions from IF members are resolved, the implementing jurisdiction's legislation is granted transitional qualification status. The IF is expected to publish a list of jurisdictions with transitional qualified status on the OECD website, including the start and end dates of applicability. Such status is valid from the effective date of the legislation until full peer review of legislation is completed, which must begin no later than two years after the legislation's effective date.

The peer review process includes a full legislative review and ongoing monitoring managed by the OECD IF which assesses whether a jurisdiction's legislation is in line with

the Model GloBE Rules, Commentary and Administrative Guidance. It needs to be noted that where the full legislative review finds that a jurisdiction's rules are not qualified or if the review is not initiated within the agreed timeframe, the loss of transitional qualified status is not retroactive and only applies to future accounting periods.

The transitional qualification mechanism and the subsequent peer review process ensures that jurisdictions' implementation of the GloBE Rules is consistent, coordinated, and transparent.





## B. Country Updates:

**Bahamas:** Bahamian Government is anticipated to introduce a draft legislation on Qualified Domestic Top-up Tax (QDMTT) which shall be applicable to fiscal years beginning on or after 1 January 2024. Furthermore, in order to avoid double taxation, the Government intends to amend the current business licence and Stamp Tax Regime by turning the 5 percent tax applied to dividends into a withholding tax. It is estimated that QDMTT could result in additional tax revenue of US \$ 140 million for the Bahamian Government.

**Canada:** On 20 June 2024, the Canada formally legislated the GloBE Rules through the introduction of a QDMTT and Income Inclusion Rule (IIR) that apply to fiscal years beginning on or after 31 December 2023. The legislation also includes Safe Harbours and is broadly in lines with the OECD Model Rules. The UTPR is expected to be introduced for fiscal years beginning on or after 31 December 2024. It is estimated that the global minimum tax shall lead to C\$ 6.6 billion of additional tax revenues over a three-year period beginning 2026.

**Germany:** On 28 May 2024, the German Federal Ministry of Finance (MOF) released a draft Pillar Two Tax Return form and accompanying instructions for filing out the return for in-scope companies. The government sought feedback on these drafts until 14 June 2024. According to MOF correspondence, these drafts were initially provided to specialist publishers, software providers, and associations for comments on 17 May. The final form will be released after reviewing the feedback received during the consultation process.

**Lithuania:** On 10 June 2024, the Government of Lithuania proposed draft rules for Pillar Two legislation. Although Lithuania has deferred the implementation of the EU Directive until 2030, the proposed legislation aims to address reporting obligations.

**Singapore:** On 10 June 2024, Singaporean Government introduced a draft Multinational Enterprise (Minimum Tax) Bill along with draft regulations for calculating GloBE Income or Loss and Adjusted Covered Tax. The proposed legislation applies Domestic Top-up Tax (DTT) and Income Inclusion Rule (IIR) referred to as Multinational Enterprise Top-up tax (MTT) from fiscal years beginning on or after 1 January 2025. The UTPR is expected to be adopted at a later stage. As per the draft legislation, UPE of in scope MNE group must notify the comptroller of its liability to be registered and must designate a constituent entity in Singapore as designated local DTT filing entity (DFE) and GloBE information return filing entity (GFE) for MTT purposes. Both DTT and MTT must be filed within 15 months after the end of each financial year (or 18 months after the end of transition year). Any DTT or MTT payable must be paid within one month after the due dates of filing the return. Currently the proposed legislation is open for public consultation till 5 July 2024.

**Australia:** On 24 June 2024, the Australian Taxation Office (ATO) announced its intention to seek more public feedback on the implementation of GloBE Rules in Australia. A dedicated webpage outlining the status of Pillar Two adoption by Australia and summary of inputs gathered during targeted consultation has been published on ATO's website, to facilitate the administration of these Rules by 30 June 2026. This move follows previous targeted consultation with stakeholders, during which the ATO gathered a wide range of concerns and suggestions regarding compliance challenges, data requirements, and system updates necessary for the new rules.



## 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 (23 countries)

Albania	Moldova
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
Liechtenstein	

### 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 (3 countries)

Australia	New Zealand
Fiji	

### Legend

	Formal adoption of GloBE Rules from 2024 <b>(27 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>(13 countries)</b>
	Written declaration to implement GloBE Rules though timelines are uncertain <b>(6 countries)</b>
	EU member states opting for delayed implementation <b>(4 countries)</b>

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