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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 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.

Calculating top-up taxes (TUT) involves a complex, multi-step process. The task is further complicated by the diverse accounting practices followed in different countries. Central to this intricate procedure is the Adjusted Covered Taxes computation, which requires a series of detailed adjustments, covering both current and deferred taxes. Additionally, the Model GloBE Rules offer various elections for certain tax adjustments, which require careful judgment and thorough analysis.

For the sake of readers' ease of understanding, we have bifurcated the computation of Adjusted Covered Taxes into two parts. The May 2024 edition focused on the first part while in this edition, we aim to analyse the second and final part of the Adjusted Covered Taxes computation process by breaking down the key components of these tax adjustments. Our objective is to present a concise analysis, helping readers gain a high-level understanding of the fundamental aspects of tax computation under the GloBE Rules.

This is the thirteenth 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.

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A. Knowledge Bytes:

GloBE Rules require the computation of jurisdictional Effective Tax Rate (ETR). The numerator for the ETR formula is Adjusted Covered Taxes, the computation of which is governed by Article 4 of the Model GloBE Rules.

The starting point for the computation mechanism is the amount of current tax expense recorded in the financial accounts with respect to Covered Taxes. Articles 4.1 to 4.4 then prescribe a set of adjustments (including accounting for deferred taxes) to arrive at Adjusted Covered Taxes. The broad theme of these adjustments is to take only those taxes into ETR computation which pertain to income included in GloBE computation so that meaningful comparison can be made.

The May 2024 edition provided an overview of the meaning of Covered Taxes, the adjustments required in the current tax expenses, the treatment of tax credits and the computation of additional current top-up tax. This edition focuses on the deferred tax adjustments, allocation of taxes from one Constituent Entity (CE) to another and post-filing adjustments.

1. Allocation of Covered Taxes from one CE to another

Art. 4.3.2 covers special cases wherein Covered Taxes are allocated from one CE to another CE. Such cases have been summarised below:

Case I – Permanent Establishment (PE)

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. A detailed discussion on PEs under the GloBE framework has been provided in our 9th Edition (March 2024).

Case II – Tax Transparent Entity

The amount of any Covered Taxes included in the financial accounts of a Tax Transparent Entity with respect to GloBE Income or Loss allocated to a CE-owner is allocated to that CE-owner. The concept of Tax Transparent Entity requires the understanding of a 'flow-through entity' and a 'fiscally transparent entity'. An Entity is a Flow through Entity to the extent it is fiscally transparent with respect to its income, expenditure, profit, or loss in the jurisdiction where it was created unless it is tax resident and subject to a Covered Tax on its income or profit in another jurisdiction. An Entity is treated as fiscally transparent under the laws of a jurisdiction, if that jurisdiction treats the income, expenditure, profit or loss of that Entity as if it were derived or incurred by the direct owner of that Entity in proportion to its interest in that Entity. Certain jurisdictions treat partnerships and trusts as tax transparent entities.

Case III – Controlled Foreign Company (CFC)

In the case of a CE whose CE-owners are subject to a CFC Tax Regime, the amount of any Covered Taxes included in the financial accounts of its direct or indirect CE-owners under a CFC Tax Regime on their share of the CFC's income are allocated to the CE.

Case IV – Hybrid Entity

An Entity that is treated as a separate taxable person for income tax purposes in the jurisdiction where it is located is a Hybrid Entity with respect to its income, expenditure, profit or loss to the extent that it is fiscally transparent in the jurisdiction in which its owner is located. In the case of a Hybrid Entity, the amount of any Covered Taxes included in the financial accounts of a CE-owner on income of the Hybrid Entity is allocated to the Hybrid Entity.

It needs to be noted that Covered Taxes allocated to a CE, under Cases III and IV above, in relation to Passive Income are included in the CE's Adjusted Covered Taxes in an amount equal to the lower of –

- Covered Taxes allocated in respect to such Passive Income; or
- the Top-up Tax Percentage for the CE's jurisdiction, determined without regard to the

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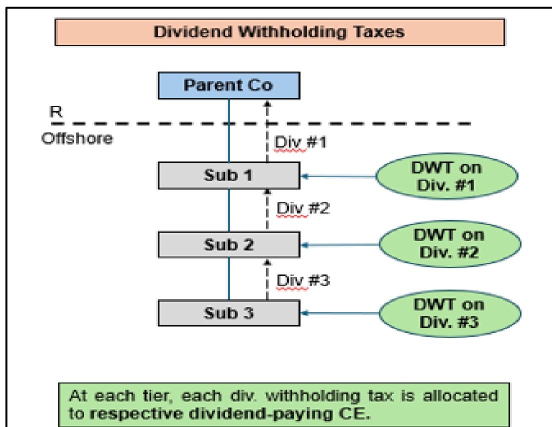
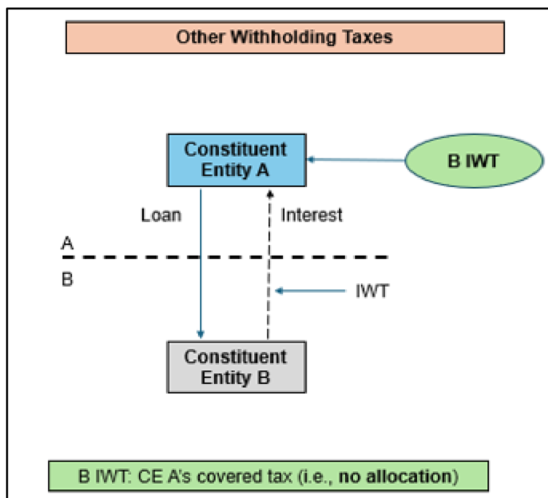
Covered Taxes incurred with respect to such Passive Income by the CE-owner, multiplied by the amount of the CE's Passive Income includible under any CFC Tax Regime or fiscal transparency rule.

Furthermore, any Covered Taxes in respect of Passive Income that remain unallocated after the above step shall not be allocated.

Case V – Distributions to owner

Dividend withholding taxes (DWTs) are allocated to the dividend paying entity while other withholding taxes (for e.g., interest withholding taxes (IWTs)) are allocated to the Entity in whose GloBE income computation, the corresponding income has been considered.





2. Deferred Taxes

The Model GloBE Rules require the current tax expense of a CE to be adjusted by the amount of deferred tax adjustment determined under Art. 4.4. It needs to be noted that the Rules require the deferred taxes to be recast at the lower of the Minimum Rate (i.e., 15%) or the corporate tax rate at which the deferred taxes are recognised in the financial accounts. However, a deferred tax asset that has been recorded at a rate lower than the Minimum Rate may be taken into account at the Minimum Rate if the taxpayer can demonstrate that the deferred tax asset is attributable to a GloBE Loss.

Art. 4.4.1 requires the following exclusions from deferred tax expenses –

a. Deferred tax expenses pertaining to income excluded from GloBE Income
b. Deferred tax expenses pertaining to Disallowed Accruals and Unclaimed Accruals
c. The impact of a valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset
d. Deferred tax expense arising from a remeasurement w.r.t a change in the applicable domestic tax rate and
e. Deferred tax expense w.r.t generation and use of tax credits

Disallowed Accrual refers to movement in deferred tax expense which relates to an uncertain tax position or to distributions from a CE. Unclaimed Accrual means any increase in a deferred tax liability recorded in the financial accounts of a CE for a FY that is not expected to be paid within five subsequent FYs and for which the Filing CE makes an Annual Election not to include in Total Deferred Tax Adjustment Amount for such FY. It needs to be noted that Disallowed Accruals and Unclaimed Accruals are excluded from ETR computation vide Art. 4.4.1 but are included in the Adjusted Covered Taxes in the year in which they are paid.

A deferred tax liability that is not paid within five subsequent FYs (from the year of creation) is required to be recaptured vide Art. 4.4.4. Such a recapture shall result in reduction of Adjusted

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Covered Taxes for the fifth preceding FY and shall require recomputation of ETR for such preceding year. Such a recaptured deferred tax liability when subsequently paid in any fiscal year is added to the Adjusted Covered Taxes of such year of payment. However, Art. 4.4.5 provides that the recapture rule shall not apply to the following –

- Cost recovery allowances on tangible assets
- The cost of a licence or similar arrangement from the government for the use of immovable property or exploitation of natural resources that entails significant investment in tangible assets
- Research and development expenses
- De-commissioning and remediation expenses
- Fair value accounting on unrealised net gains
- Foreign currency exchange net gains
- Insurance reserves and insurance policy deferred acquisition costs
- Gains from the sale of tangible property located in the same jurisdiction as the CE that are reinvested in tangible property in the same jurisdiction

The OECD IF issued an Administrative Guidance in June 2024 which provides administrative simplification for the recapture of DTL by allowing MNE Groups to track DTLs on an aggregate basis. Such aggregation is allowed to be done on a 'General Ledger account' (GL account) basis. 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). Additionally, the June 2024 AG also prescribes conditions for when an MNE Group could use either the 'first-in-first-out' (FIFO) or 'last-in-first-out' (LIFO) method to track DTLs for recapturing purposes.

3. Post-filing adjustments and tax rate changes

An increase in Covered Taxes for a previous FY is only taken into account in current FY. This has the effect that refunds of Top up Tax paid with respect to prior FYs will not occur. A decrease in Covered Taxes included in the CE's Adjusted Covered Taxes for a previous FY, requires the ETR and Top up Tax for such FY to be recalculated.

A Filing CE may make an Annual Election to treat an immaterial decrease in Covered Taxes as an adjustment to Covered Taxes in the FY in which the adjustment is made. An immaterial decrease in Covered Taxes is an aggregate decrease of less than EUR 1 million in the Adjusted Covered Taxes determined for the jurisdiction for a FY. Say, in FY 1, a CE claims 15 of Covered Taxes resulting from a deferred tax liability on 100 of GloBE Income at 15%. In FY 2, the jurisdiction reduces its domestic tax rate to 10%. Thus, when the deferred tax liability is ultimately paid, only 10 of tax will be paid (10% ETR). Article 4.6.1 requires when such reduction is material, that the FY 1 Top up Tax must be recomputed. In this, 5 of Top up Tax would be due in FY 2 owing to the re-computation.

If more than EUR 1 million of the amount accrued by a CE as current tax expense and included in Adjusted Covered Taxes for a FY is not paid within three years of the last day of such year, the ETR and Top up Tax for the FY in which the unpaid amount was claimed as a Covered Tax must be recalculated by excluding such unpaid amount from Adjusted Covered Taxes.

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B. Country Updates:

India: On 23 July 2024, the Indian Government presented the Union budget 2024-25. The Finance Minister proposed abolishing the 2% equalization levy on e-commerce supplies from 1 August 2024. This move is aimed at aligning with the OECD's Two-Pillar Solution to address tax challenges from digitalization and enhance international tax compliance. Furthermore, the Finance Minister affirmed that the government is taking a "positive approach" towards the OECD tax deal and that the Government intends to adopt the Two-Pillar Solution soon.

Israel: On 29 July 2024, the Israeli Ministry of Finance announced its plan to implement Qualified Domestic Minimum Top-up Tax (QDMTT) in line with the GloBE Rules from fiscal years beginning on or after 1 January 2026. The Government has decided not to immediately adopt the Income inclusion Rule (IIR) and the UTPR (erstwhile known as the Undertaxed Profit Rule) based on the advice received from the officials and stakeholders. The Government plans to reassess the implementation of the GloBE Rules after observing the performance of the QDMTT over a period of time. This move aims to maintain Israel's attractiveness to investors and provide stability for MNEs operating in the country.

Australia: On 4 July 2024, the Australian Government introduced three pieces of draft legislation in its parliament for implementing the Pillar Two GloBE Rules. These bills have been referred to the Senate Economics Legislation Committee, with a report expected by 14 August 2024. The bills were introduced following extensive consultations with the public and other stakeholders. These bills include legislation for a DMTT, the IIR and the UTPR in lines with the OECD Model Rules. As per the draft legislation, DMTT and IIR will be applicable retroactively from fiscal years beginning on or after 1 January 2024, and the UTPR from fiscal years beginning on or after 1 January 2025.

Belgium: The Belgian tax authorities extended the deadline for certain companies to submit their registration notification from 15 July to 16 September 2024. Such extension has been granted for in-scope companies that will not make advance payments in 2024 for DTT and IIR.

Spain: On 14 June 2024, Spain's Council of Ministers presented a draft bill to parliament to incorporate the EU Directive on Pillar Two GloBE rules into Spanish law. The bill mostly mirrors the original draft legislation from December 2023, but includes some updates on safe harbors, tax credits, and penalties. As per the draft bill DMTT and IIR will take effect for tax periods starting on or after 31 December 2023, while the UTPR would start from 31 December 2024.

Gibraltar: On 3 July 2024, Gibraltarian Minister for Taxation, Nigel Feetham announced that a team from the Income Tax Office is collaborating closely with a government-appointed group to determine the most effective way to implement new tax measures pertaining to the Pillar two GloBE Rules. The Gibraltarian Government aims to adopt the DMTT by the end of 2024, with draft legislation expected in September, and to implement the IIR by 2025.

Türkiye: On 16 July 2024, Türkiye introduced a draft law to its Parliament, proposing QDMTT and a 15% global minimum tax for in-scope MNEs. The draft also includes provision for IIR, UTPR and Transitional Country-by-Country Reporting Safe Harbor (TCSH), aligning broadly with the OECD Model Rules. The QDMTT and IIR would be applicable to fiscal years beginning on or after 1 January 2024, while the UTPR would apply to fiscal years beginning on or after 1 January 2025.

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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	
(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 **(13 countries)**
(yellow)	Declaration to implement GloBE Rules though timelines are uncertain **(9 countries)**
(grey)	EU member states opting for delayed implementation **(4 countries)**

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Nilesh Chandak has been a key contributor in preparation of this Monthly Alert.

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