INTERGOVERNMENTAL GROUP OF TWENTY FOUR
G-24

The BEPS Monitoring Group

A global network of independent researchers

The Global Minimum Tax and Developing Countries

Sol Picciotto
Emeritus Professor, Lancaster University
Senior Fellow, International Centre for Tax & Development
Coordinator, BEPS Monitoring Group

Components of Pillar Two

- **The Global Anti-Base Erosion Tax (GloBE)**
  Model Rules: published December 2021
    no public consultation, but some comments submitted
    private consultations with business, possible revisions?
  Commentary published 14 March
  Template, not legally binding

- **Implementation**
  Optional even for Inclusive Framework members - ‘concerted approach’, not multilateral convention
  Implementation Framework still under negotiation, consultation end-April
  Implementation monitoring mechanism: peer review, or more collective?

- **Adoption by Key Participants**
  Aim: legislate in 2022, in force 2023
  EU Directive: Council (French presidency) aim: proposal 15 March, approval May, in effect 2023 (transition period)
  UK target effective date 1 April 2023, Switzerland consultation, in force 2024
  US: GILTI (and BEAT?) “co-existence” with GloBE - provided they are revised as in Build Back Better Bill
    BBBB stalled in Congress, tax measures could be presented separately (majority in Senate?)
    If GILTI not modified, US MNEs would be subject to IIRs in EU, UK etc

- **The Subject-to-Tax Rule (STTR)**
  Allow tax on gross interest, royalties & “defined set of other payments”, if subject to ETR **<9%**
  Tax rate: **up to 9%** (minimum ETR is also maximum)
    scope still under negotiation?
  (Political) commitment for IF members to include in treaties with “developing” IF members
  Model treaty provision + Commentary: publication by end-March
  Multilateral instrument for speedy implementation
  Due to be published March, opened for signature mid-2022

Pillar 2 and Developing Countries

- **Limitations of the GloBE**
  GloBE itself does not benefit capital-importing countries
  Minimum ETR still low (global average CIT rate 25%), still incentive to shift source income
  Priority to MNE home country IIR, UTPR at source only backup
  GloBE threshold MNEs >€750m turnover
  IIR could apply to MNEs below this – but not UTPR (Commentary)
- **Qualified Domestic Minimum Top-Up Tax (QDMTT)**
  Top-Up Tax on domestic Constituent Entities (i.e. subsidiaries)
  Effective only if MNE declares high profits in the country
  Benefits intermediary low-tax 'conduit' countries, not high-tax source countries
  Could be backup for low taxed profits protected by 'carve-out'
  encourages continued tax competition
- **Subject to Tax Rule (STTR)**
  Text due by end-March
  Scope? "certain related party payments"
  Maximum 9% rate lower than most existing treaty WT rates for royalties & interest
  Depends on treaty revision
- **Source Country choice: STTR or Alternative Measures?**
  Commitment to STTR only for countries adopting the GloBE
  Alternative measures may be compatible with the GloBE
  but OECD countries likely to treat STTR as maximum

Measures to Protect Source Tax Base

- **GloBE should encourage measures to protect source taxation**
  No reason for tax exemptions on inward investment if Home country will apply IIR
  Carve-out will protect only 5% of value of tangible assets & payroll
- **Anti-Base Erosion Tax at Source**
  UK Diverted Profits Tax, Australia's MAAL – likely to continue
  So even GloBE participants may supplement it with other measures
  Tax on income or "in lieu" is Covered Tax under GloBE
  Outside the GloBE: eligibility for Foreign Tax Credit?
  New US FTC Regulations require "jurisdictional nexus" – business opposition
- **Withholding Taxes**
  Easy to administer, but apply to gross payment
  Need to extend to all Services (including automated digital services)
  Transaction tax on Digital Services considered trade restriction by US >> trade sanctions
  Tax treaty restrictions? UN Model Other Income Article permissive.
  Amend treaties if necessary by adding UN Model article 12A & 12B (or broad article 12)
- **Net Profits Taxation**
  Significant Economic Presence (SEP) + "deemed profit" (Nigeria)
  SEP + Formulaic Allocation (India proposal 2019, UN Model 12B)
  Alternative Minimum Tax: based on turnover/assets (Aslam & Coelho, IMF 2021)

Withholding Tax on Payments for Services

- **Should not be limited to Digitalised Services**
  Non-residents performing services in a country create no local jobs
  Particularly B2B services, payments are deductible, reduce source tax base
  Tax fairness between foreign & local service providers

- **Domestic Law and Tax Treaty Restrictions**
  Domestic law can be broad, treaties protect only resident of treaty partner
  Treaty shopping? Could disallow payment to Conduit under Principal Purpose Test
  UN Model Other Income article: can tax at source income 'not dealt with' in treaty

- **Withholding Tax on Payments**
  Easy to administer, but applies to gross payment not profit, easy to pass on to customers
  Rate e.g. 10-15%

- **Tax Treaty Provisions**
  UN Model Other Income article may allow
  UN Model article 12A Fees for Technical Services "arising in" state
    - only if human intervention
    - Version in Commentary para. 26 for All Services "performed in" state/paid to related party

  UN Model article 12B automated digital services
    - net income option (for recipient): 30% x [local revenues x MNE's global profit rate]

Tax on (Net) Profits at Source

- **Taxable Nexus**
  Model Convention article 7: business profits attributable to permanent establishment (PE)
  UN Model art. 5.3.b: "furnishing" services through personnel >183 days
    - must personnel be physically present? For 183 days?
    - Need evidence of presence

  Significant Economic Presence test
    - India 2018: transactions in goods/services/property (threshold)/ interactions with users
    - Nigeria 2020: N20m ($60k) income from streaming/data/sales through digital platform
    - Pillar One: €1m revenues (€250k if GDP <€40b) – clear and simple to apply

- **Calculating Net Profits**
  Nigeria: 'deemed profit' % of revenues (6% for digital)
  India: 2019 proposal: formulary apportionment/ global profit rate x local revenues + minimum

- **Compatibility with Tax Treaties**
  UN Model art.7.4: fractional apportionment to PE
    - can treat local affiliate as dependent agent

  Eligible for foreign tax credit? New US FTC rules jurisdictional test
    - could use Pillar One sourcing rules (place where services performed)

Summary

- **Pillar Two**
  GloBE itself of little benefit to low-income countries
  But should enable countries to strengthen source taxation
  Re-evaluate incentives based on Carve-Out assets & payroll substance test
  STTR: restricted scope & relatively low rate
- **Alternative Measures**
  Payments for B2B services
    - deny deductions to Conduits (under PPT if treaty applies), or
    - apply Withholding Tax

  Alternative Minimum Tax - % of turnover/assets/expenditures
  Tax on Net Profits
    - Significant Economic Presence test for nexus
    - Deemed profits / fractional apportionment to attribute profit
    - Could use Pillar One threshold and sourcing rules

Many Thanks!

https://www.bepsmonitoringgroup.org/