



Pillar Two and Source Countries

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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 – still awaited
- **Implementation Framework**
Still awaited
consultation expected in March, seems delayed
'concerted approach' or multilateral convention?
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
UK public consultation: enactment autumn 2022, in effect 1 April 2023
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

The GloBE Model Rules

- **Template or Treaty?**
Concerted approach: national adoption, variations possible if ‘consistent with outcomes’
Minimum ETR 15% still low (global average CIT rate 25%), can states apply higher minimum?
Competition over tax base, e.g. allowances for investment, R&D, patent boxes, acquisition of intangibles
Effectiveness depends mainly on MNE home countries that apply Income Inclusion Rule
- **Computation of GloBE Income or Loss**
Financial accounts can allow management discretion: need for audit
e.g. treatment of uncertain tax positions & stock-based compensation
Exclusion of international shipping income: need to show real management activities
- **Computation of Adjusted Covered Taxes**
Negative tax expense in loss-making year should be Additional Top-Up tax (contra BIAC)
Deferred tax approach to taxes due allows management discretion, Carry Forward better
But anyway deferred tax amounts should be recast at minimum rate (contra BIAC)
- **Computation of ETR**
Eligible Employees for carve-out should not include independent contractors
- **Corporate Restructurings and Holding Structures**
All prior asset transfers should be valued as on books of disposing entity (art. 9.1.3)
De-mergers should be covered by article 6.5 as Multi-Parent Groups (for 6 years)
Dual-listed Arrangements & Stapled Structure definitions should be broader
- **Under-Taxed Profits Rule (UTPR)**
Should allow an additional tax, not just denial of deduction
No reason to exclude MNEs in Start-Up phase, if within scope

Rule Interaction

- **Reliance on Priority**
METR proposal for a single formulaic allocation of Top-Up Tax rights rejected
but now Pillar 1 sourcing rules cover all services
Increased complexity of rule interaction: IIR, UTPR, STTR – and now QDMTT
- **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
- **Source Countries will not Benefit from the GloBE**
- **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?**

Measures to Protect Source Tax Base

- **GloBE should encourage measures to protect source taxation**
No reason for low source taxation if Home country will apply IIR
- **Anti-Base Erosion Tax at Source**
UK Diverted Profits Tax, Australia's MAAT – 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)

Many Thanks!

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