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THE GLOBAL MINIMUM TAX (GMT)

PART 4: Status of the GloBe Rules Pillar Two

Since its implementation in October 2021 as part of the OECD/G20 BEPS Project, the OECD's GloBe Rules Pillar Two has seen steady advancements. Currently, 140 members of the OECD Inclusive Framework have committed to the GloBe Rules Pillar Two, while just 51 nations, predominantly from Europe, have implemented the Global Minimum Tax by incorporating the Qualified Domestic Minimum Top-up Tax (QDMTT) into their domestic legislation along with the Income Inclusion Rule (IIR) or Undertaxed Profits Rule (UTPR). Some jurisdictions have opted to implement both the IIR and UTPR.

QDMTT, IRR and UTPR

The Qualified Domestic Minimum Top-up Tax (QDMTT) is a provision in domestic law that allows the source country to collect the top-up tax. Although jurisdictions are not obligated to enact a QDMTT, if they choose to do so, it must be consistently aligned with the GloBE Rules and the Commentary. In cases where the QDMTT is not implemented, the entitlements to the top-up tax are assigned to the foreign jurisdictions under the Income Inclusion Rule (IIR).

Under the IIR, any top-up tax is settled within the country of the Ultimate Parent Entity or any immediate entity in the ownership chain. Conversely, the Undertaxed Profits Rule (UTPR) applies when the Ultimate Parent Entity has not implemented the GloBE Rules Pillar Two. Hence, under the UTPR, the top-up tax will be adjusted in the country of residence of the constituent entity, or the latter will be denied certain deductions.

Recent Key documents issued by OECD.

On 15 January 2025, the Organisation for Economic Co-operation and Development (OECD) published technical documents on the operation of the Global Anti-Base Erosion (GloBE) Model Rules. These documents contain significant additional information relevant to the interpretation and implementation of the GloBE Rules, making them an essential component of the Global Minimum Tax Package. The key documents released by the OECD include:

- New Administrative Guidance on Article 9.1: This guidance addresses the application of deferred tax assets (DTAs) resulting from specific tax benefits granted by General Government (covering all levels of federal, state, regional, and local government) or from the introduction of a new corporate income tax after 30 November 2021.

- New Administrative Guidance on a Central Record of Legislation with Transitional Qualified Status.

- New Administrative Guidance on Articles 8.1.4 and 8.1.5: This guidance outlines how to fill out specific sections of the GloBE Information Return (GIR) and includes a clear mandate for multinational enterprises (MNEs) to prepare the GloBE Information Return (GIR) in alignment with the GloBE Model Rules and definitions, with notable exceptions, rather than the relevant country's legislation.

- A Multilateral Competent Authority Agreement: This agreement acts as a facilitator for swift exchange of GloBE information; it is accompanied by a User Guide for Tax Administrations on the GIR XML Schema.

US Withdrawal

While we should not overlook the impact of the United States' withdrawal from the OECD GloBE Rules Pillar Two, as recently announced during the Trump Administration, we believe that participating countries committed to international tax reform will not backpedal. These nations are focused on addressing base erosion and profit shifting practices, which they recognise as detrimental to their economies and with significant long-term consequences.

Mauritius Impact

Mauritius has already embedded the provisions for the Qualified Domestic Minimum Top-up Tax (QDMTT) under Section 4 of its Income Tax Act 1995, although these provisions have yet to be proclaimed. The upcoming Budget Speech, expected in June 2025, may shed light on the timeline for this proclamation.

Presently, companies are already required to disclose in their income tax returns whether they form part of a Multinational Group with consolidated turnover exceeding EUR 750 million Furthermore, businesses are already adhering to the Country-by-Country reporting requirements under BEPS Action 13 since Mauritius has pledged to the BEPS minimum standards. Therefore, it would not be a challenging task to identify those companies concerned with the Global Minimum Tax.

In our humble view, despite the setbacks in terms of additional compliance burden and costs upon implementation of the GloBe Rules Pillar Two in Mauritius, its underpinning benefit would be significant.

The Global Minimum Tax will enable any Mauritian entity liable to that tax to pay the top-up tax in Mauritius, thereby avoiding the risk of incurring any additional top-up taxes in other jurisdictions. This approach would promote fairness for both investors and the Mauritian economy.

UN Framework Convention on International Tax Cooperation

Albeit the progress of the OECD GloBe Rules Pillar Two, it is worth mentioning the ongoing negotiation happening for UN Framework Convention on International Tax Cooperation.

The UN was solicited by the African Union (comprising 54 member states) in 2022 to assume a global fiscal role due to developing countries' dissatisfaction with the Pillar Two model rules, which might explain the fact that merely 3 countries within the African region have enacted legislations around GloBe Rules Pillar Two out of the 23 African countries, members of the Inclusive Framework.

The aim of developing countries to embrace the UN Framework Convention is rooted in maintaining their taxing rights as source nations on cross-border services and alleviate the resources constraints related to the implementation of the OECD GloBE Rules Pillar Two.

However, the European Union and others oppose this initiative, contending that it duplicates efforts already initiated under the OECD/G20 BEPS Project.

The final Framework Convention is underway and is expected to be finalised in 2027. We anticipate gaining more clarity in the upcoming years regarding the developments of both the OECD GloBe Rules Pillar Two and the rules under the imminent UN Framework Convention, on whether international tax practices might indeed be threatened with potentially two global frameworks in force; unless they can coexist and ensure fair allocation of taxing rights.

References:

- OECD Website
- PWC’s Pillar Two Country Tracker
- African Union website

DTOS Tax Advisory Department

DTOS Tax Advisory Department offers a plethora of customised solutions in this ever-changing tax world - from tax planning and structuring to tax compliance, dispute Resolutions and advice on international taxation - to accompany corporate and private clients. This department has also crafted a series of tailored tax training courses on all relevant topics that our clients are facing.

Contact us.

Samiirah BAHEMIA (FCCA)

Manager – Tax Advisory

SBahemia@dtos-mu.com

T: +230 5 250-3531

Mario HANNELAS (FCCA)

Head – Tax Advisory

MHannelas@dtos-mu.com

T: +230 5 258-4751