

BEPS & Pillar Two

FEBRUARY 21, 2023

LEADING TAX DEPARTMENTS
FORWARD

wts global

GTM is a U.S. member firm of the WTS
Global international tax network.

Speakers



Raymond Wynman
Managing Director, International Tax
Global Tax Management



Andrew McKinley
Director, Tax
Global Tax Management




ABOUT GTM

Established in
1995


100%
focused on corporate
tax services

We help companies
build, operate, and
manage tax department
functions.



**GLOBAL
REACH**

GTM is a US member
firm of the WTS Global
international tax
network.



 TAX PROVISION	 INCOME TAX COMPLIANCE	 INDIRECT TAX	 TAX AUTOMATION	 INTERNATIONAL TAX
 TRANSFER PRICING	 TAX DEPRECIATION	 R&D TAX CREDIT	 TAX CONSULTING & PLANNING	 TAX TRAINING

400+
active clients

- Fortune 1000 Companies
- Middle Market Companies
- PE Firms / Portfolio Companies
- Pre-IPO / Emerging Growth Companies

100%
employee
owned (ESOP)

FLEXIBLE DELIVERY MODELS

			
Co-Sourced	Outsourced	Project-Based	Transitional



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Agenda

- How Did We Get Here?
- Pillar Two Overview
- Pillar Two Status
- Application of Pillar Two
- Pillar Two Mechanics
- Transitional Safe Harbour
- Other items under Pillar Two
- Next Steps

HOW DID WE GET HERE?

How Did We Get Here?



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THE WALL STREET JOURNAL

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Get Out of the Segway!

U.S. Economy Shows Glimmers, Strains

DOW JONES ▲ 12.76 0.07% NASDAQ ▲ 428.32 ▲ 0.32% NYSE ▲ 1934.32 ▲ 0.07% 10-YR. TREAS. ▼ 6/32, yield 2.380% OIL ▲ 545.22 ▲ \$2.66 GOLD ▲ 1133.30 ▲ \$31.70 EURO ▲ 1.1185 YEN ▲ 121.70

FINANCIAL TIMES
FRIDAY 10 OCTOBER 2021 WORLD BUSINESS NEWSPAPER

Indecision Day
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How To Spend It
Ripping across an Arctic icescape

THE WALL STREET JOURNAL
FRIDAY, OCTOBER 8, 2021 VOL. CCLXXXVIII NO. 54

What's News
Business & Finance

Former NBA Players Accused of Healthcare Fraud

Pfizer Asks FDA To Allow Shot for Ages 5-11
Covid-19 vaccines for millions of children possible within weeks if approval is granted

Global Corporate Tax Clears Hurdle
Minimum rate of 15%

Brussels in crackdown on 'double Irish' tax loophole
EU builds pressure on tactic favoured by big US tech and drug companies

Edinburgh shows independent spirit with Scots version of mansion tax

Former Xtrata chief 'bid for BHP assets'

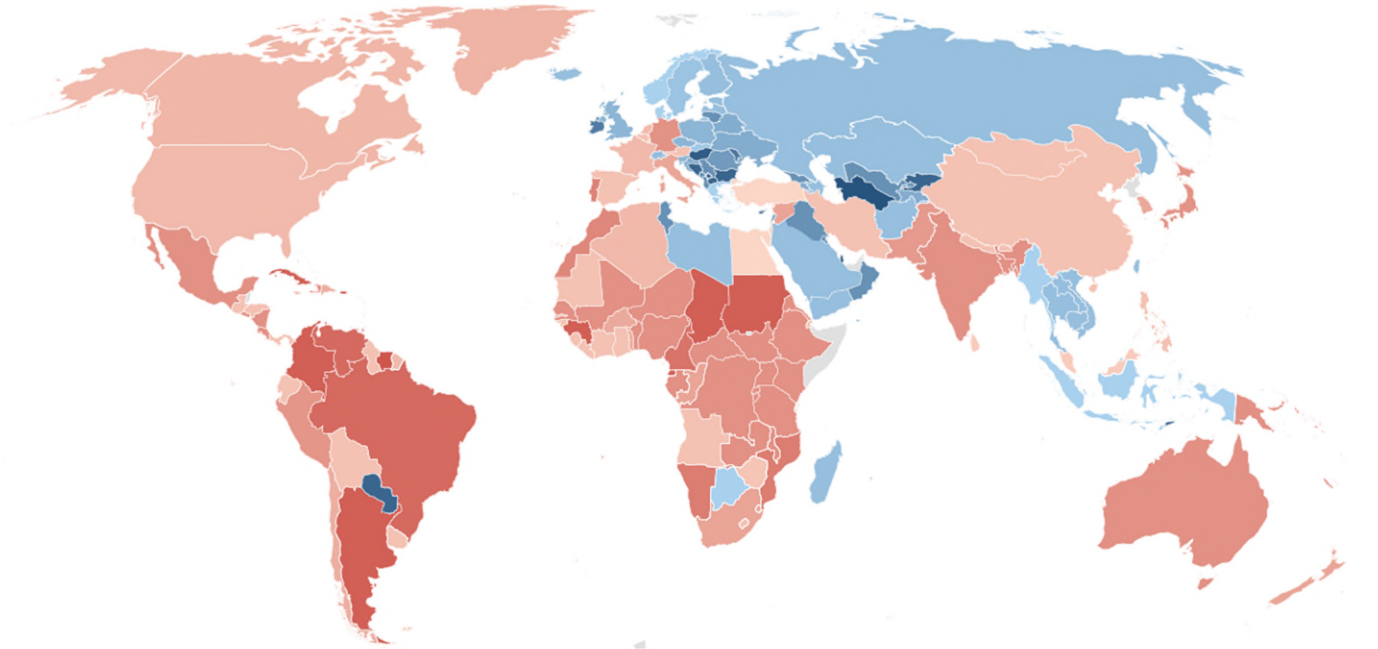
CFR plan to boost research tax credits



Current Landscape

Corporate Tax Rates around the World

Statutory Top Corporate Income Tax Rates, 2022



Statutory Top Corporate Income Tax Rates, 2022



Sources: OECD, "Table II.1. Statutory corporate income tax rate;" KPMG, "Corporate tax rates table;" and some jurisdictions were researched individually.

TAX FOUNDATION

@TaxFoundation

Worldwide v. Territorial Tax Systems

Worldwide	Territorial
<ul style="list-style-type: none">» Foreign-earned income is generally included in the business' domestic tax base.» Prior to the 2017 Tax Cuts and Jobs Act (TCJA), the United States (US) operated a worldwide tax system—also known as a residence-based tax system—under which US corporations were required to pay US corporate income taxes on all earnings worldwide, with a credit for foreign corporate taxes paid.» As part of the TCJA, the US shifted from worldwide taxation towards quasi-territorial taxation.	<ul style="list-style-type: none">» Countries enact territorial tax systems—also known as source-based tax systems—through so-called “participation exemptions.” These allow multinational businesses to exclude or deduct foreign-earned income from their domestic tax base, ensuring that such profits are only taxed in the foreign country in which they were earned.» A common concern with shifting to a territorial tax system is base erosion and profit shifting (BEPS).



PILLAR TWO OVERVIEW

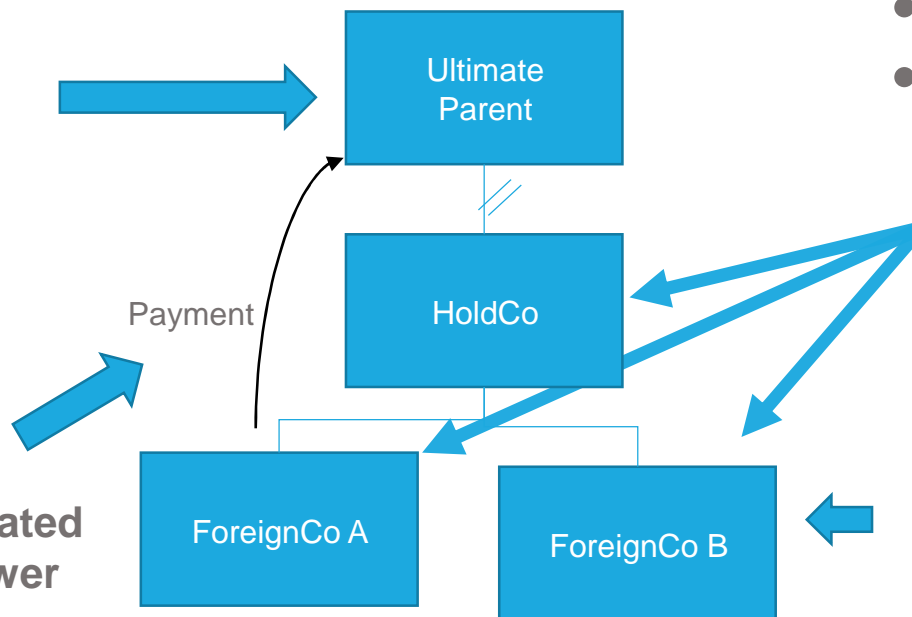
What is Pillar Two?

Income Inclusion Rule (IIR):

- Minimum ETR of 15%
- Top-up tax levied at ultimate parent for low-taxed subsidiaries

Subject to Tax Rule (STTR)

- Minimum nominal tax of 9%
- Interest, royalties and other related party payments subject to a lower tax rate could be subject to tax under income tax treaty



Undertaxed Profit Rule (UTPR)

- Minimum ETR of 15%
- Backstop rule: If IIR is not assessed, additional tax is assessed to other entities based on assets/employees

Qualified Domestic Minimum Top-Up Tax (QDMTT)

- Minimum ETR of 15%
- Local country maintains primary right to impose its own top-up tax



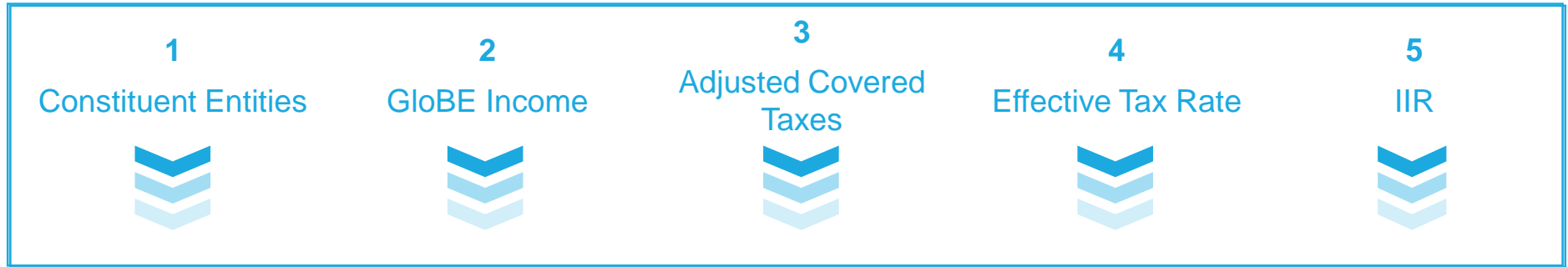
Steps to Determine the Minimum Taxation (Top-Up Tax)



What is Pillar Two?

An international coordinated system of taxation intended to ensure large multinational enterprise (MNE) groups pay a minimum level of tax on the income arising in each of the jurisdictions where they operate.

15%
minimum
tax rate



1
Constituent Entities

Identify entities/permanent establishments within the scope of Pillar Two, their locations and their role for the assessment of the minimum taxation

2
GloBE Income

Determine income of each entity/permanent establishment based on the group financial reporting and Pillar Two specific adjustments

3
Adjusted Covered Taxes

Determine (deferred) taxes attributable to the income per country for the purpose of calculating the effective tax rate in Step 4

4
Effective Tax Rate

Calculate the ETR on a country-by-country basis including all entities located in a country and calculate the top-up tax in case the ETR is lower than 15%

5
IIR

Impose top-up tax by the income inclusion rule (IIR) on ultimate parent entity level

PILLAR TWO STATUS



Pillar Two Status In the US

- **US has no new legislation to address Pillar Two**
 - » Build Back Better Act proposed changes to the GILTI to be calculated on a country-by-country basis, but ultimately legislation did not pass in the US Senate
 - » Greenbook addressed the possibility of an Undertaxed Profit Rule (UTPR), it was but ultimately never included in any proposed legislation
 - » Inflation Reduction Act of 2022 did introduce into law a 15% Corporate Alternative Minimum Tax (CAMT)
- **US Multinationals could be subject to Pillar Two**
 - » Intermediary IIR at holding company level
 - » UTPR when IIR may not apply
 - Including US company itself
 - » Potential for double taxation since no credit is expected for IIR and UTPR tax
 - Not clear but QDMTT may qualify as foreign tax credit (see ordering rules later)



Pillar Two Status around the World

- **EU provided with the EU Directive to implement Pillar Two**
 - » Pillar Two directive adopted on 15 December 2022
 - Hungary had withdrawn support for Pillar Two, but recently dropped veto. Also, Poland withdrew reservations in December 2022.
 - » EU adopted Pillar Two Directive unanimously under written procedure
 - » Final version published in all official EU languages in EU's Official Journal on 22 December 2022
 - » Effective date is likely January 2024 but may require calculations for financial statement purposes in 2023
- **Next Steps for EU members:**
 - » Member States must transpose rules into law by 31 December 2023
 - » Some Member States have already published draft legislation and launch public consultations
- **South Korea parliament approved 2023 budget bill that includes Pillar Two legislation**
 - » Both IIR and UTPR should be effective in 2024
 - » Potential issue for US MNE with South Korean subsidiaries
- **UK, Australia, Canada, and Japan intend to implement Pillar Two**

OECD Released Three Documents on Pillar Two in December 2022

Safe Harbours

- » Global anti-base erosion rule
- » Request for simplification and safe harbours based on Country-by-Country Report (CbCR)
- » No GloBE ETR calculation for Qualified Domestic Minimum Top-Up Tax (QDMTT) jurisdictions

GloBE Information Return

- » Every constituent entity (CE) located in a GloBE implementing jurisdiction is required to file a GloBE information return
- » CEs could be exempt from the filing requirement if a return is filed by:
 - » The UPE located in a jurisdiction that exchanges information with the CE's jurisdiction, or
 - » By a Designated Filing Entity appointed by the MNE Group and located in a jurisdiction that exchanges information with the CE's jurisdiction
- » This mechanism would allow filing of a single GloBE Information Return covering all CEs in the MNE Group, through a reporting information process similar to that built for CbCR.

Tax Certainty for the GloBE Rules

- » Covers the rules on the administration of the new taxing right and the tax certainty-related provisions
- » Structured in three parts:
 - » Administration
 - » Tax Certainty Framework
 - » Tax Certainty of Issues

APPLICATION OF PILLAR TWO

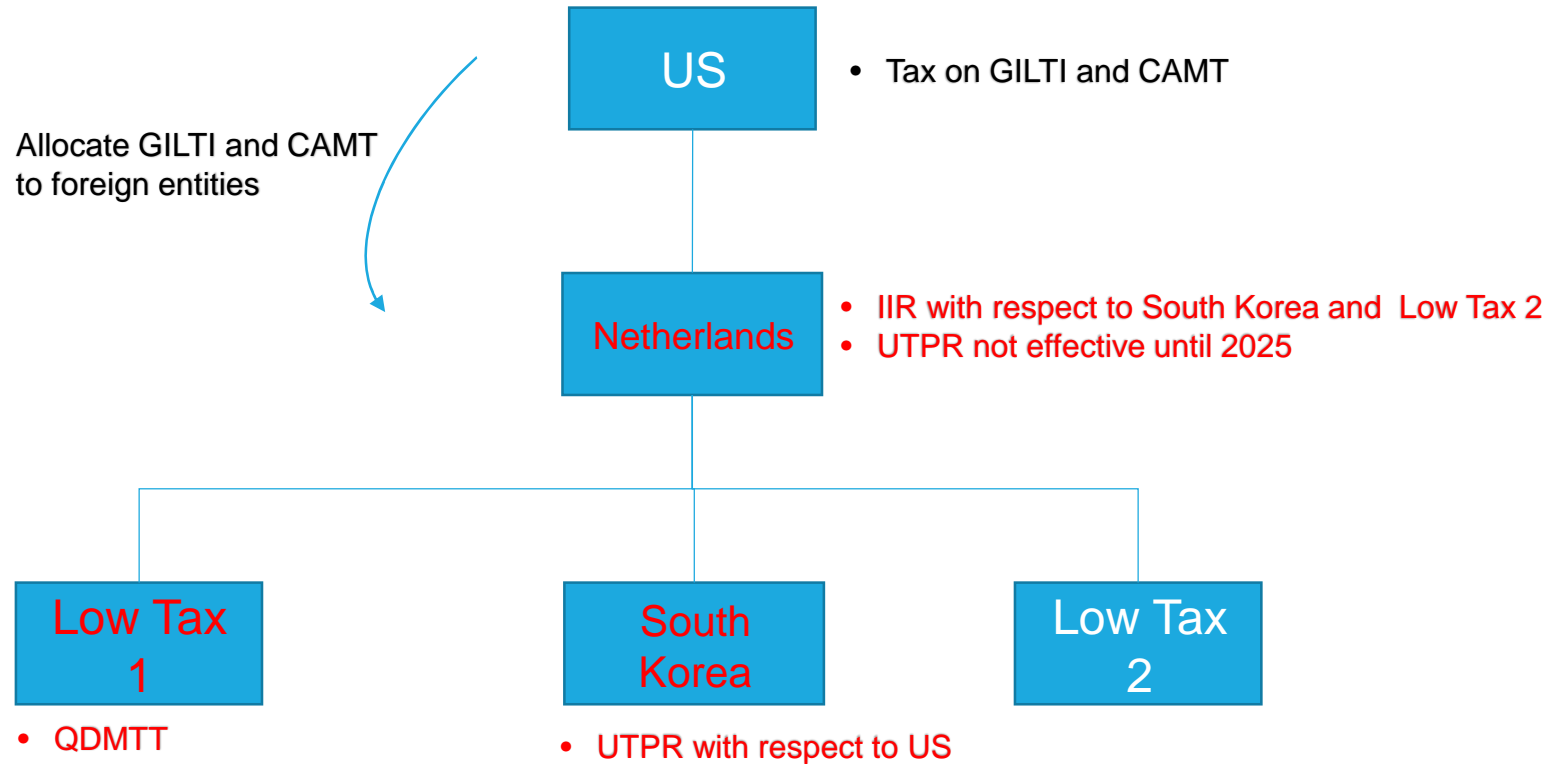


Potential Ordering of US taxes with Pillar Two taxes

1. Determine Foreign QDMTT
2. Calculate regular US Tax and BEAT
 - a. Separate US tax from GILTI and Subpart F tax
3. Calculate CAMT, if any
 - a. Separate US CAMT from foreign CAMT
4. Allocate US taxes to foreign jurisdiction
 - a. Allocate GILTI/Subpart F tax
 - b. Allocate CAMT, if any
5. Calculate IIR
 - a. No FTC for IIR taxes
6. Calculate UTPR, if applicable
 - a. No FTC for UTPR taxes



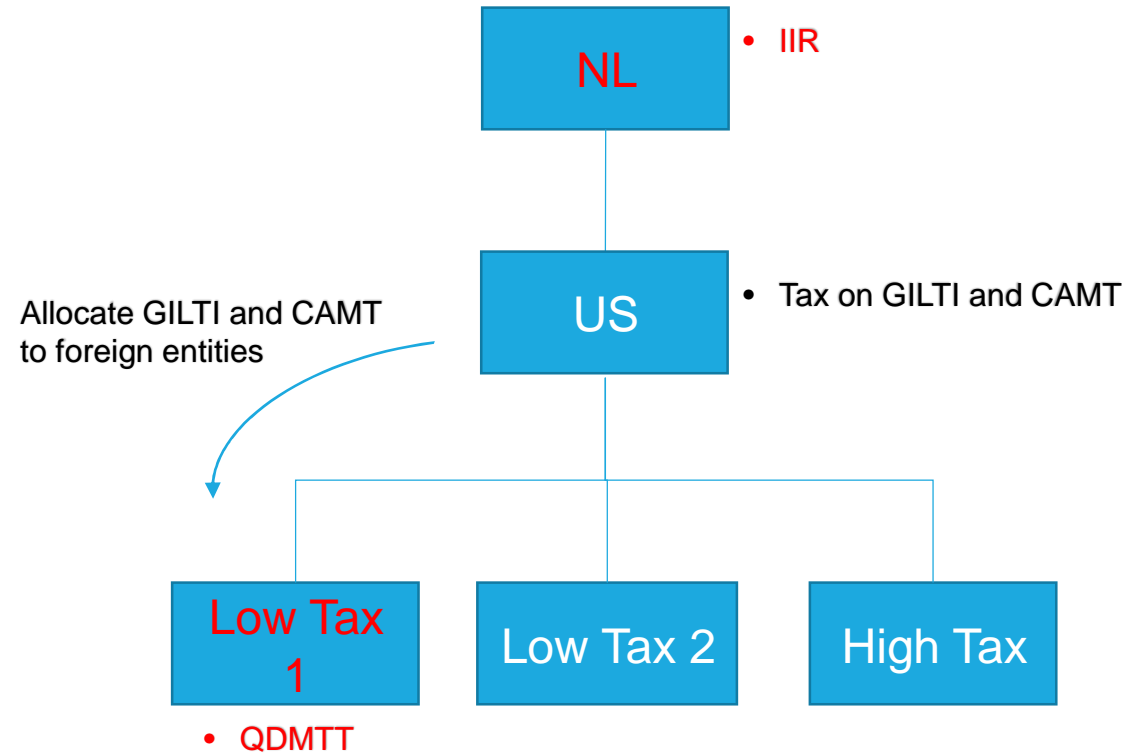
US Outbound Example for 2024



Red = Countries that implemented some form of Pillar Two



Inbound Example



Red = Countries that implemented some form of Pillar Two

PILLAR TWO MECHANICS

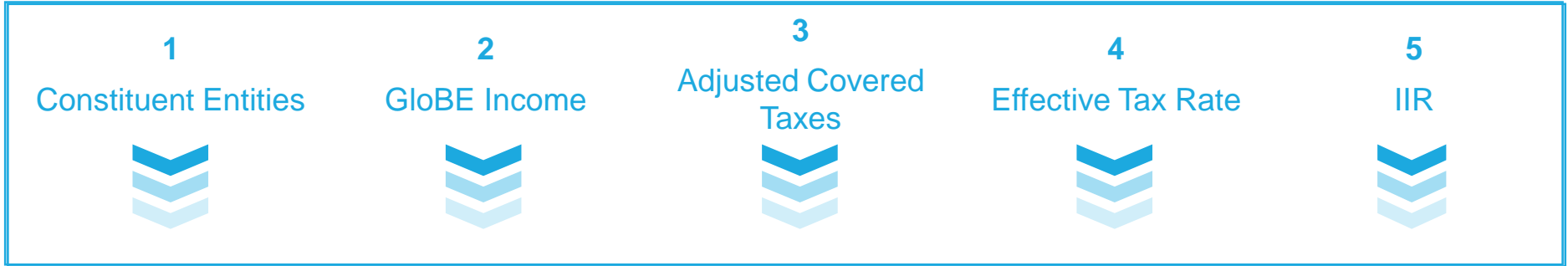
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GloBE Income – Adjusted Financial Income

- Net Tax Expense
- Excluded Non-portfolio dividends
- Excluded equity gain or loss
- Certain revaluation method gains or losses
- Certain gains or losses on disposition of assets/liabilities
- Asymmetric foreign currency gains or losses
- Policy disallowed expenses
- Prior period errors and changes in accounting principles
- Accrued pension expense
- Allocation of income/loss to permanent establishments and from flow-through entities



GloBE Income – Adjusted Financial Income (cont'd)

- **Intercompany transactions**
 - Intercompany transactions with no-same country adjusted to arm's length
 - Certain Intercompany transactions with same country adjusted to arm's length
 - Exclusion of certain expenses attributable to Intercompany financing arrangements between low-taxed and high-taxed entities
- **Qualified refundable tax credits reclassified as income**
- **Certain elections**
 - Stock-based compensation tax expense
 - Exclusion of gains/losses attributable to fair value accounting or impairment accounting
 - Look-back for aggregate asset gain
 - Consolidated accounting treatment of entities in same jurisdiction



Identification of Covered Taxes

- **Current Taxes**

- >> “In lieu of” taxes (i.e., taxes imposed instead of corporate income tax)
- >> Includes otherwise Covered Taxes “above the line”
- >> Taxes levied on retained earnings / corporate equity
- >> Adjustments related to uncertain tax positions
- >> Excludes current tax liabilities not expected to be paid within three years
- >> Profits on actual / deemed distributions (i.e., CFC regimes)



Identification of Covered Taxes

- **Deferred Taxes**

- >> Deferred taxes are adjusted to the lower of 15% or the actual income tax rate
- >> Deferred tax relating to Disallowed Accruals and Unclaimed Accruals (and such amounts paid during the year)
- >> Valuation allowances / accounting recognition adjustments
- >> Deferred tax expense relating to rate changes
- >> Deferred tax relating to tax credits
- >> Recapture deferred tax liability (DTL) paid during the year
- >> Transition rule for post 30 November 2021 intercompany transactions
- >> GloBE Loss Election in lieu of temporary adjustments, if applicable



TRANSITIONAL SAFE HARBOUR



Safe Harbours Rule

- OECD issued Safe Harbours rules to alleviate administrative burden
 - » Package includes:
 - Transitional CbCR Safe Harbour
 - Permanent Safe Harbour
 - Transitional Penalty Relief
 - » Transitional CbCR Safe Harbour applies for 2023, 2024, 2025, and 2026
 - “Once out always out” rule
 - If a particular jurisdiction does not meet the Safe Harbour in a particular year, that same jurisdiction cannot meet the Safe Harbour in subsequent years
 - If jurisdiction meets one of the Safe Harbour tests, Top-up tax is deemed to be zero and reporting requirements is limited to Safe Harbour data
 - If jurisdiction does not meet any of the Safe Harbour test, full GloBe Income and Covered tax calculations are required including required reporting requirements



Safe Harbours Rule (cont'd)

- **Transitional Safe Harbour applies if jurisdiction meets one of the following test**
 - » De minimis test: Revenue is less than €10M in revenue and €1M in profit before tax (“PBT”)
 - Data is from Qualified CbCR report
 - » Simplified ETR test: ETR is equal/larger than 15% in 2023-2024, 16% in 2024, and 17% in 2025
 - PBT is from Qualified CbCR report
 - Current and Deferred Taxes are from Qualified Financial Statements adjusted for UTP and non-covered taxes
 - » Routine Profits: PBT is equal/less than income associated with Substance-based Income Exclusion



Safe Harbours Rule Data

- **Qualified CbCR report**
 - CbCR report that is based on Qualified Financial Statements
- **Qualified Financial Statements**
 - a) Accounts used to prepare the Consolidated Financial Statements of the Parent;
 - b) Separate financial statements of each Constituent Entity provided they are prepared in accordance with either an Acceptable Financial Accounting Standard or an Authorized Financial Accounting Standard if the information contained in such statements is maintained based on that accounting standard and it is reliable; or
 - c) In the case of a Constituent Entity that is not included in an MNE Group's Consolidated Financial Statements on a line-by-line basis solely due to size or materiality grounds, the financial accounts of that Constituent Entity that are used for preparation of the MNE Group's CbCR Report

OTHER ITEMS UNDER PILLAR TWO



Other Items under Pillar two

- **OECD Administrative Guidance provides for specific rules for the allocation of the GILTI tax**
 - » Mechanical rule that looks at how income per jurisdiction but weighted
- **OECD Administrative Guidance provides for “Overall Domestic Loss” recapture rules**
 - » Mechanism to allow for tax expense to be recognized in year of domestic income when US tax could be offset by foreign tax credits
- **FASB issued a statement that Pillar Two tax is an alternative minimum tax (AMT) under Topic 740**
 - » Deferred tax assets and liabilities would not be recognized or adjusted for the estimated future effects of the minimum tax
- **IAS 12 has issued similar proposed guidance as FASB**



NEXT STEPS



Next Steps

- **Run the Transitional Safe Harbour rules for an initial exposure**
 - Tools available to make a first run
 - Adjust outcome as needed to reflect adjustment to data used
- **Review CbCR data for quality purposes**
 - Is CbCR based on qualified financial statements?
- **For jurisdictions that did not meet Safe Harbour rules**
 - Development of a Pillar Two project plan
 - Perform a GAP analysis
 - Compile solutions
- **Development of a roll-out concept for compliance and IT implementation support**
- **Training concept & documentation**
- **Ongoing worldwide support**