On your marks

Get ready for implementation of the global minimum corporate tax rules

By Suzy Zozor, chair of the GFIA Taxation Working Group

As we reflect on the GFIA Taxation Working Group's work over the last year, more than 50 jurisdictions are reported to be set on drafting regulations to implement Global Anti-Base Erosion (GloBE) rules (see explainers box) in their domestic tax legislation. What seemed an unachievable goal in the early days of the BEPS Action 1 works in 2015 is now taking shape, both swiftly and slowly depending on the viewpoint.

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS, see explainers box) issued in December 2022 a draft GloBE Information Return and the outlines of ongoing discussions on tax certainty, safe harbours and penalty relief. The Inclusive Framework sought input from stakeholders and GFIA contributed by highlighting the need for simplifications and the adverse effect of designing a strenuous reporting requirement while seeking swift global implementation.

Given the complexity of the GloBE rules, as pointed out by many stakeholders including GFIA and GFIA member associations, the Inclusive Framework issued in February 2023 Administrative Guidance intended to provide further clarifications. While GFIA acknowledged the Inclusive Framework's extensive work and the consideration given to comments the industry had submitted in previous papers, GFIA felt it necessary to underscore where the additional guidance needed further fine-tuning.

As the implementation process is moving forward in many jurisdictions — and at a rather brisk pace in the EU and the UK — the Inclusive Framework continues to release additional material for clarification purposes on the implementation framework. An updated version of the GloBE Information Return, additional guidance and the outlines of the subject to tax (STTR, see explainers box) rule were released in late July 2023.

Explainers

GFIA comment letter on December 2022 GloBE implementation package, 3 February 2023

GFIA letter to the OECD on Administrative Guidance on the GloBE Rules, 9 May 2023

After thorough analysis of the GloBE rules package as it is being refined by the Inclusive Framework, most tax authorities are now considering the inclusion of a qualified domestic minimum top-up tax (QDMTT, see explainers box) in their domestic implementation package. Not only does such a QDMTT, if truly qualified, exempt multinational enterprises from full computation as set out in the GloBE Rules in the given jurisdiction, but it also enables the implementing state to collect tax from resident ultimate parent entities (UPEs, see explainers box).

The idea was to provide financial resources to states by fighting a tax race to the bottom. Well, lesson learned; there may very well be a 15% QDMTT in most implementing countries.

Pillar One slowly emerges

The OECD/G20 Inclusive Framework on BEPS agreed in October 2021 on a two-pillar solution to address global tax issues stemming from the digitalisation of the economy. Intended to reallocate part of the tax base in the jurisdiction where goods and services are consumed, Pillar One is designed for a phased implementation. According to its design and if all implementation conditions are met, as of 2025 Pillar One will provide for the reallocation of excess profits made by multinational enterprises that exceed the threshold of US€20bn turnover and 10% profitability. That threshold is set to be lowered pursuant to a peer-review.

The OECD released a progress report in November 2022 and various consultation documents in January and July 2023, thus shaping a clearer picture of the rules to come. GFIA welcomes the fact that insurance and reinsurance are now fully included in the Regulated Financial Services Exclusion, as the multinational enterprises in the industry are usually taxed where they operate.

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Pillar One, Pillar Two … and the rest

GFIA's Taxation Working Group has also covered issues other than the gigantic two-pillar OECD tax reform, such as the review of VAT rules in various jurisdictions that would have spill-over effects on insurance, the outcome of the peer review at OECD level on the Common Reporting Standard and the entry into force of International Financial Reporting Standard (IFRS) 17 on insurance contracts.

GFIA comment on Australian Taxation Office Directive – public CbCR proposals, 17 July 2023

The draft public country-by-country reporting (CbCR) legislation in Australia also kept the Taxation Working Group busy, monitoring the parliamentary process of enactment as the first draft diverged completely from other existing public CbCR rules. GFIA thus highlighted what difficulties such differences in the local reporting requirement could entail for multinational enterprises operating in Australia.

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Explainers

Base erosion and profit shifting (BEPS)

Multinational enterprises that exploit gaps and mismatches between countries' tax systems lead to domestic tax base erosion and profit shifting (BEPS). The OECD estimates that BEPS practices cost countries US$100-240bn in lost revenue each year. The OECD/G20 Inclusive Framework on BEPS aims to tackle tax avoidance, improve the coherence of international tax rules, ensure a more transparent tax environment and address the tax challenges from the digitalisation of the economy.

Global Anti-Base Erosion (GloBE) rules

GloBE rules comprise three of the four rules embedded in Pillar Two of the OECD/G20 Inclusive Framework on BEPS. The GloBE rules are a combination of an Income Inclusion Rule (IIR), an Undertaxed Payment Rule that is designed as a backstop for the IIR and a Switch-Over Rule applicable to transactions between a parent entity and an exempt parent entity under treaty provisions. The three rules aim to create an effective minimum tax rate of 15% in all jurisdictions in which a multinational enterprise operates.

Qualified domestic minimum top-up tax (QDMTT)

This is a minimum tax that is included in the domestic law of a jurisdiction and that, in a manner equivalent to the GloBE rules, increases domestic tax liability on excess profits to 15% in that jurisdiction, to the extent such excess profit is determined in a manner consistent with the computation of the GloBE income.

Subject to tax rule (STTR)

The Pillar Two initiative also comprises an STTR designed to ensure a minimum nominal rate of 9% on various transactions defined in tax treaties. This specific set of rules targets transactions accounted for in bilateral tax agreements with developing countries.

Ultimate parent entity (UPE)

The UPE is an entity that has controlling interests in other entities of a group without being controlled by any other entity.