Pillar 2 Technical Series

Computation of GloBE Adjustments

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Pillar Two Technical Series

Catch up on our previous sessions!

1. **Overview & Transition Years – Watch now**
   - In this webinar, we'll provide a broad overview of Pillar Two. In addition, we'll discuss transitional safe harbors and what makes a Qualified Domestic Minimum Top-Up Tax (QDMTT) "Qualified." Our knowledgeable professionals will share insightful commentary on how these rules are impacting multinational enterprises.
2. **MNE Group Determination – Watch now**
   - In this webinar, we delve into the intricacies of multinational enterprise (MNE) group determination and explore the challenges posed by complex organizational structures. Our knowledgeable professionals will provide a practical discussion on the basics of MNE group determination and explore issues and complexities companies face as they navigate this topic.
3. **Complex MNE Groups – Watch now**
   - In this webinar, we discuss computations for non-material constituent entities (NMCEs), joint venture (JV) groups, and the intricacies of GloBE considerations. Gain valuable insights and practical knowledge to navigate these advanced topics effectively.
4. **Tax Accounting Overview & Impact – Watch now**
   - In this webinar, we provide a detailed overview of general tax accounting principles and delve into the significant impacts of Pillar Two. Our knowledgeable professionals will share key concepts and practical implications, helping you stay ahead in the evolving tax and financial reporting landscape.

Meet Today's Presenters

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Agenda

1. Introduction & Quick Recap
2. Listed Adjustments
3. Other GloBE Adjustments
4. International Shipping Income Exclusion
5. Closing Comments

Calculation Steps

Step	Actions
Step 1 – Constituent Entities Covered	• Identify MNE Groups within scope of the GloBE Rules. • Identify Constituent Entities (“CEs”) and Remove any Excluded Entities. • Identify location of each CE.
Step 2 – Determine GloBE Income or Loss	• Determination of Financial Accounting Net Income / (Loss). • Adjust Financial Accounting Net Income or Loss to GloBE Base. • GloBE Income or Loss allocated to Permanent Establishments or through Flow–Through Entities where necessary.
Step 3 – Adjusted Covered Taxes	• Identification of Covered Taxes. • Adjust Covered Taxes for temporary differences and losses and allocate to other CEs as necessary. • Take post–filing adjustments into account.
Step 4 – Effective Tax Rate and Top-Up Tax Computation	• Determination of Substance-Based Income Exclusion Amounts and other exceptions. • Computation of jurisdictional Top–Up Tax for low–taxed jurisdictions (after consideration of Safe Harbours and elections). • Allocation of the Top–Up Tax between Low Taxed CEs.
Step 5 – Applying the Charging Provisions	• Identification of UPE liable for Top–Up Tax under IIR and determination of Top–Up Tax paid by UPE under IIR. • Identification of the remaining amount, if any, that is allocable under the UTPR. • Liability for residual Top–Up Tax in the UTPR Jurisdictions through a UTPR adjustment.

Jurisdictional Top-Up Tax Liability

JURISDICTIONAL TOP-UP TAX LIABILITY

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TOP-UP TAX LIABILITY (for jurisdiction) + ADDITIONAL CURRENT TOP-UP TAX* (for jurisdiction) − QDMTT (for jurisdiction)

*Applies where the ETR and Top–Up Tax for a prior Fiscal Year is required or permitted to be recalculated pursuant to an ETR Adjustment Article.

Computation of the Top-Up Tax – Overview

TOP-UP TAX LIABILITY (for jurisdiction) = **TOP-UP TAX PERCENTAGE** (for jurisdiction) × **EXCESS PROFITS** (for jurisdiction)

TOP-UP TAX PERCENTAGE (for jurisdiction)

GloBE Rate of 15%

−

GloBE Jurisdictional ETR

[Adjusted Covered Taxes ÷ Net GloBE Income / (Loss)]

EXCESS PROFITS (for jurisdiction)

Net GloBE Income / (Loss)

−

Substance-Based Income Exclusions

[(Eligible Payroll Expenses × Applicable Rate of 5%) + (Eligible Tangible Assets × Applicable Rate of 5%)]

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Computation of Net GloBE Income/(Loss)

Financial Accounting Net Income or Loss (FANIL)

+

GloBE Adjustments

−

Exclusion for International Shipping Income

GloBE Adjustments

Listed

- Net Tax Expense
- Excluded Dividends
- Excluded Equity Gains or Losses
- Included Revaluation Method Gains or Losses
- Gains or Losses from Disposition of Excluded Assets / Liabilities
- Asymmetric Foreign Currency Gain / (Loss)
- Policy Disallowed Expenses
- Prior Period Errors
- Changes in Accounting Principles
- Accrued Pension Expense

Other

- Debt Releases
- Stock-Based Compensation Adjustment
- Arms-Length Adjustment
- Qualified Refundable Tax Credit Adjustment
- Fair Value Gain / Loss Adjustment
- Aggregate Asset Gain Election Adjustment
- Intragroup Financing Arrangement Expense
- Intragroup Transaction Election Adjustment
- Insurance Company Tax Adjustment
- Tier One Capital Equity Adjustment
- GloBE M&A Adjustments

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Listed GloBE Adjustments (Article 3.2.1)

Article 3.2.1(a): Net Tax Expense

- Addback of the net tax expense to a CE’s FANIL.
- May be a negative adjustment, *e.g.*, CE incurs a net loss that results in creation of a deferred tax asset.
- Net tax expense is defined to include the net amount of:
  - Covered taxes accrued
  - Current and deferred income tax expense
  - DTAs attributable to a Fiscal Year loss
  - QDMTT and IIR/UTPR taxes
  - Disqualified Refundable Imputation Taxes, *i.e.,* refundable taxes to a beneficial owner related to distribution of a dividend generally

Article 3.2.1(b): Excluded Dividends

- Adjustment to FANIL for any dividends or other distributions paid from shares or equity interests where
  - an MNE Group holds 10% or more of the payor or
  - the recipient CE has held full economic ownership of the interest for a period of 12 months or more.
- Exceptions:
  - Short–term portfolio shareholdings
  - Ownership interest in an Investment Entity – subject to the Taxable Distribution Method election in Article 7.6

Article 3.2.1(c): Equity Gains/Losses

- Adjustment to FANIL for a CE's excluded equity gain or loss
- Excluded Equity Gain / (Loss) defined:
  - **Changes in Fair Value**
    - Changes in fair value recorded in P/L
    - If included in OCI, no negative adjustment needed
  - **Equity Method Accounting –** typically with non–controlled Entities owned 20 to 50%
    - Equity method net income = negative adjustment
    - Equity method net loss = positive adjustment
  - **Dispositions** – applicable where MNE Group, in aggregate, owns 10% or more of Ownership Interest other than a Portfolio Shareholding
    - Unlike Excluded Dividends, time period for holding the Ownership Interest is not relevant for determining whether to include such gain or loss

Article 3.2.1(d): Included Revaluation Method Gains/Losses

- Applies to Entities under the Revaluation Method with respect to accounting for property, plant, and equipment (PPE)
- Defined as net gain or loss, increased or decreased by any Covered Taxes, for the Fiscal Year in respect of all PPE that
  - periodically adjusts the carrying value of PPE to its fair value,
  - records such changes in OCI, and
  - does not subsequently report the gains or losses recorded in OCI through its P/L
- Election – permits CE to not include the gains or losses found in OCI in GloBE income as they arise and defer recording until the asset underlying the PPE is disposed.

Article 3.2.1(e): Gains or Losses From Disposition of Excluded Assets/Liabilities

- Article 6.3's GloBE Reorganisation provisions
  - typically requires inclusion of gain or loss arising from a transfer of assets and liabilities
    - To extent gain is excluded = negative adjustment
    - To extent loss is excluded = positive adjustment
- GloBE Reorganisation
  - Gain or loss to the extent there is Non–Qualifying Gain or Loss
    - The lesser of taxable or financial accounting gain or loss on the transfer (as defined in Article 10)

Article 3.2.1(f): Asymmetric FXGL

- **Asymmetric Foreign Currency Gain or Loss (FXGL)**: GloBE Adjustment that arise due to differences between functional currency for accounting purposes and the one used for local tax purposes.
- Common scenarios – If included in either the computation of a CE’s taxable income or FANIL:
  - **Tax Included** – FXGL attributable to fluctuations in the exchange rate between its accounting functional currency and its tax functional currency
    - Positive adjustment to FANIL = FXGL
    - Negative adjustment to FANIL = tax FX loss
  - **FANIL Included –** FXGL attributable to fluctuations in the exchange rate between its tax functional currency and its accounting functional currency
    - Positive adjustment = accounting FX gain
    - Negative adjustment = accounting FX loss

Article 3.2.1(f): Asymmetric FXGL

- Special Scenarios – where there is a third foreign currency attributable to FXGL:
  - **FANIL Included** – FXGL attributable to fluctuations in the exchange rate between a third foreign currency and its accounting functional currency
    - Positive adjustment = accounting FX loss
    - Negative adjustment = accounting FX gain
  - **Tax Related** – FXGL attributable to fluctuations in the exchange rate between a third foreign currency and its tax functional currency, regardless whether FXGL is included in taxable income.
    - Positive adjustment = tax FX gain
    - Negative adjustment = tax FX loss

Article 3.2.1(g): Policy Disallowed Expenses

- Policy Disallowed Expenses
  - Adjusts FANIL for expenses accrued by the CE for illegal payments, bribes, kickbacks, fines, and penalties.
- De Minimis rule for fines and penalties
  - no adjustment needed if CE’s fines and penalties are less than EUR 50,000 (or equivalent amount in FC of CE’s FANIL) for a single year

Article 3.2.1(h): Prior Period Errors & Changes in Accounting Principles

- Adjustment where there are changes made to a CE's opening equity at the beginning of a Fiscal Year attributable to either:
  - **Prior Period Error**: a correction of a prior period errors that generally affected the computation of GloBE income or loss in a prior Fiscal Year where GloBE was applicable
    - If error correction requires a corresponding decrease to Covered Taxes in a previous Fiscal Year of EUR 1M or more, no adjustment is needed.
  - **Change In Accounting Principles**: A change in accounting principle or policy that affects the income or expenses includable in the computation of GloBE income or loss.
    - Only applies to the extent the equity adjustment is attributable to items of income/expense should have been included in computation of GloBE income or loss.

Article 3.2.1(i): Accrued Pension Expense

- FANIL adjustment equal to the difference between:
  - amount of pension contributions made during the year and
  - amount accrued as an expense in the FANIL computation
- Dependent upon whether a CE’s FANIL includes an accrued pension expense or income with respect to a Pension Fund.
  - Accrued Pension Expense:
    - Positive Adjustment = if amount accrued under FANIL exceeds contributions for the year
    - Negative Adjustment = if contributions for the year exceed expense accrued in FANIL
  - Accrued Pension Income
    - Negative Adjustment = sum of pension income and amount of pension contributions, if any, during the Fiscal Year

Article 3.2.1(i): Accrued Pension Expense

Accrued Pension Adjustment

=

Pension Contributions (for fiscal year)

+

Accrued Pension Income / (Expense)

×

(–1)

Other GloBE Adjustments

Debt Release Exclusion Election

- **Debt Release:** Where an amount owing by an entity is waived or forgiven by a creditor without being repaid in full and with the debtor being freed or released from any further obligation to pay the amount and is recorded in FANIL of CE.
- Introduced in February 2023 Administrative Guidance
- Election to exclude from GloBE Income / (Loss)
- Certain procedural and other specified rules for claiming the Election must be met.

Debt Release Exclusion Election

- Applicable if debt release relates to:
  - **Bankruptcy Proceedings** – debt release undertaken under in formal insolvency or bankruptcy proceedings
    - Applies to third-party and related–party debts released applicable to the debt arrangement;
  - **Foreseeable Debtor Insolvency** – Attributable to a third-party debt and debtor would have been insolvent within 12 months but for the release of the third–party debts released under the debt arrangement.
    - Applies to third-party and related–party debts released applicable to the debt arrangement;
  - **Actual Debtor Insolvency** – Debtor's liabilities exceed fair market value of its assets determined immediately before the debt release.
    - Applies to only third-party debts
    - Amount excluded = lesser of (a) the excess Debtor's liabilities over FMV of its assets determined immediately before the debt release, or (b) the reduction in Debtor's attributes under tax laws of jurisdiction resulting from debt release.

Article 3.2.2 – Stock-Based Compensation Adjustment

- Election to permit CEs to substitute the amount of stock–based compensation allowed as a deduction to CE's taxable income in place of the amount expensed in the CE's financial accounts.
- Addresses disparity between tax and financial accounting treatment:
  - **Tax purposes** – value of compensation paid based on FMV of stock when option exercised
  - **Financial accounting purposes** – value of compensation paid based on present value of stock at time of issuance, amortized over exercise period
- Five-year election once made
- Certain recapture provisions and additional rules included to prevent claiming deduction for option that will never be exercised.

Article 3.2.3 – Arms Length Adjustment

- Transactions between Group Entities must be priced consistently with the Arm's Length Principle and recorded at the same price for GloBE purposes for all parties.
  - Presumption: Arm's Length Principle is default for uncertain situations or where transfer pricing by country differs.
- Not required for transactions between CEs in same jurisdiction
  - Loss Exception: Arm's Length Principle must be considered if transfer of an asset produces a loss taken into account in the GloBE income / loss computation, *i.e.,* not excluded loss.
  - If five-year consolidated accounting election in Article 3.2.8 in place for jurisdiction – no adjustment is needed.

Article 3.2.4 – Qualified Refundable Tax Credit Adjustment

- Full amount of Qualified Refundable Tax Credit (QRTC) is to be treated as GloBE income for a recipient CE in the year of accrual.
  - QRTCs or portion of a credit that is a QRTC, = income (not a reduction to GloBE income)
  - Non–QRTCs or portion of a credit that is not a QRTC = deduction in full from GloBE income.

- Corresponding adjustment to Adjusted Covered Taxes are needed to reflect these adjustments.

Article 3.2.4 – Qualified Refundable Tax Credit Adjustment

- QRTC: tax credit designed where:
  - (1) it must be paid as cash or available as cash equivalents, and
  - (2) will be paid or made available within 4 years from when CE satisfies conditions for credit under applicable jurisdiction laws.

- Non QRTC: any tax credit that is:
  - (1) not a QRTC, and
  - (2) is refundable in whole or in part.

Article 3.2.4 – Marketable Transferable Tax Credit Adjustment

- Addressed in 2023 July Administrative Guidance
- Marketable Transferable Tax Credit (MTTC) treated as QRTCs.
- MTTC: any tax credit which meets all three requirements:
  - (1) can be used by the holder of the credit to reduce its liability for a Covered Tax in an issuing jurisdiction and
  - (2) meets the Legal Transferability Standard in the hands of holder, and
  - (3) meets Marketability Standard in the hands of holder.

Article 3.2.4 – Marketable Transferable Tax Credit Adjustment

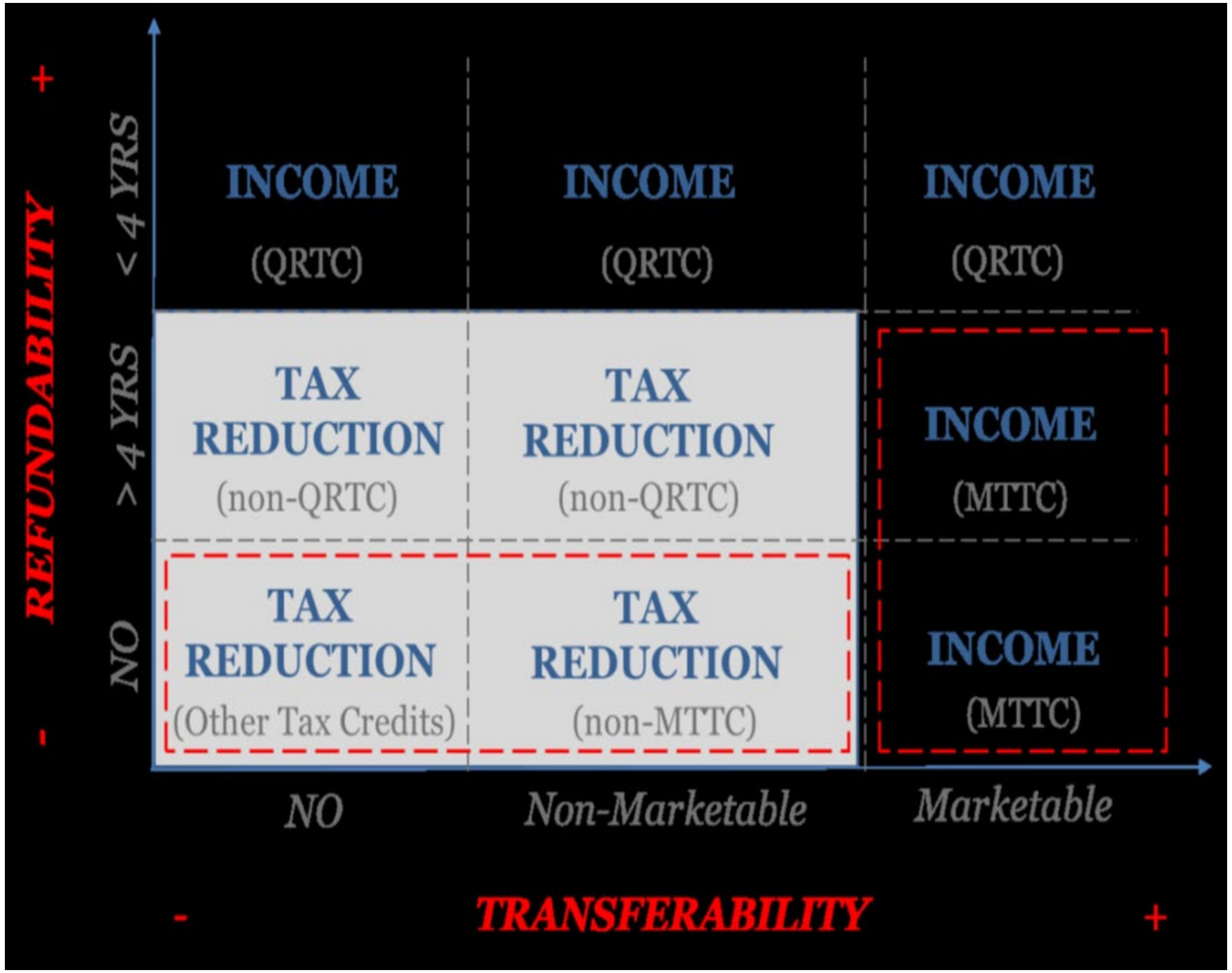
- **Legal Transferability Standard**:
  - Originator of a tax credit
    - if the tax credit regime is designed where Originator can transfer the credit to an unrelated party in the Origination Year or within 15 months of the end of the Origination Year.
      - Origination Year – Fiscal Year in which it satisfies the eligibility criteria for the credit
  - Purchaser of a tax credit
    - if the tax credit regime is designed where purchaser can transfer the credit to an unrelated party in the Fiscal Year in which it purchased the tax credit.

Article 3.2.4 – Marketable Transferable Tax Credit Adjustment

- **Marketability Test**:
  - Originator of a tax credit
    - if transferred to an unrelated party within 15 months of the end of the Origination Year at a price that equals or exceeds the Marketable Price Floor.
      - May be satisfied if not transferred or transferred between related parties and similar tax credits trade between unrelated parties within 15 months of the end of the Origination Year
  - Purchaser
    - if Purchaser acquired the credit from an unrelated party at a price that equals or exceeds the Marketable Price Floor.
- Marketable Price Floor: 80% of NPV of tax credit
  - NPV is determined based on yield to maturity on debt instrument issued by the issuing government with equal or similar maturity (and up to five-year maturity) issued in the same Fiscal Year as the tax credit transferred (or if not transferred, the Origination Year).

Article 3.2.4 – QRTC & MTTC Testing

- Testing threshold for determining the GloBE category of a tax credit – looks to
  - (a) the *refundability* and
  - (b) if refundable, then *transferability* of tax credit.
- If tax credit meets the refundability criteria and qualifies as a QRTC, it will be defined as a QRTC regardless of whether it could be also be transferable at a marketable price.
- If tax credit does not meet the refundability criteria, *i.e.*, it is either a non–refundable or a non–QRTC, then the transferability criteria is tested to determine whether tax credit could be a MTTC.



Article 3.2.5 – Fair Value Gain/Loss Adjustment

- Election to include gain/(loss) under realization method in lieu of fair value or impairment gain/(loss) with respect to assets sold.
- Five-Year Election
  - cannot be revoked after election made until after five-year period
  - Cannot be elected into after revocation until five subsequent years.
  - If revoked, recapture adjustments must be made to reflect the net fair value gain or loss that arose during the pendency of the election.
- Effect of Election:
  - If elected, gain/(loss) associated with asset or liability will arise when asset is disposed rather then as its value changes due to changes in market value or impairments.
  - Carrying value of asset or liability for purposes of determining gain/(loss) is carrying value of asset or liability at the later of time the asset acquired / liability incurred or beginning of the year in which election made.

Article 3.2.6 – Aggregate Asset Gain Election

- Permits an MNE Group to allocate Aggregate Asset Gain under a specified method allocating the Aggregate Asset Gain over a period of up to five years
  - Aggregate Asset Gain = net gain in the election year from disposition of Local Tangible Property owned by all CEs located in the jurisdiction – except gain or loss on asset transfer between Group Members.
  - If not elected – gain/loss in a single year, *i.e.*, effecting MNE Group's jurisdictional ETR
  - Local Tangible Property – immovable property located in the same jurisdiction as the CE in question
  - Five-year period – four years before election made and the election year
- Election
  - Annual
  - made on a jurisdictional basis

Article 3.2.7 – Intragroup Financing Arrangement (IFA) Expense

- Requires group financing payments, *i.e.*, interest expense, between Low Tax and High Tax Entities in an MNE Group not increase GloBE income of High Tax Entity to the extent High Tax Entity uses the interest income to immediately set–off interest income with excess interest expense capacity.
  - Adjustment needed – increase expense in computing the GloBE income or loss of the Low Tax Entity and not have a corresponding increase to GloBE income of High Tax Entity party to the IFA.
- **IFA**: any arrangement between two or more members of the MNE Group whereby a High Tax counterparty directly or indirectly provides credit or otherwise makes an investment in a Low Tax Entity.
  - Includes all steps and transactions that give effect to the arrangement (including intermediaries involved).
    - Financing Intermediary Exception: if intermediary operates as a treasury/financing center managing group's working capital requirements, money borrowed from the High Tax Counterparty considered separate from and independent from loan made to the Low Tax Entity, *i.e.*, loans not in arrangement.
- **Low/High Tax Entity** – entity which would be a Low Tax/High Tax Jurisdiction if ETR determined without regard to any income / expense accrued in the IFA.

Article 3.2.8 – Intragroup Financing Arrangement (IFA) Expense

- Election permits consolidated accounting treatment to be applied to transactions between CEs of the same MNE Group in the same jurisdiction.
  - Effect: income, expense, gains, and losses from transactions between CEs may be eliminated from the computation of GloBE income or loss in same manner as amounts related to transactions among members of a consolidated group are eliminated as part of the consolidation adjustments under an Acceptable Financial Accounting Standard used by the UPE in preparing its Consolidated Financial Statements.
- Must distinguish transactions between CEs in the same jurisdiction vs. CEs in a different jurisdiction.
- May be revoked
  - If revoked, appropriate adjustments are required to ensure no duplication or omission of items in computation of GloBE income or loss.

Article 3.2.9 and 3.2.10 – Insurance Company Tax and Tier One Capital Equity Adjustment

- Exclude income of an **insurance company** from computation of GloBE income – Article 3.2.9
  - To the extent amounts charged to policy holders for taxes paid by an insurance company with respect to returns to the policy holders are only excluded if the tax is not recorded as an expense within the P/L before tax in the financial accounts.
  - No adjustment needed if tax on policy holders is treated as an above–the–line expense under the accounting standard used in the Consolidated Financial Statements.
- Increases or decreases to equity of a CE attributable to distributions related to **Additional Tier One Capital** to be treated as income / expense in computation of GloBE income or loss – Article 3.2.10
  - Equity adjustments for issuance or redemption of Additional Tier One Capital not included in GloBE.
  - Additional Tier One Capital: instrument issued by a CE pursuant to regulatory requirements applicable to the banking sector convertible to equity or may be written down if a pre–specified triggering event occurs with other features designed to aid loss absorbency in the event of a financial crisis.

Article 3.2.11 – GloBE M&A Adjustment

- Adjustments must be made to CE's FANIL necessary to reflect the requirements of Article 6 (Corporate Restructuring and Holding Company rules) and 7 (Tax Neutrality and Distribution Regime rules) of the GloBE Model rules
- Special elections included in these Articles enabling dividend income in certain scenarios to be included in GloBE income or loss and Adjusted Covered Taxes – *i.e.*, Taxable Distribution Method Election under 7.6.
- Additional rules tailored to adjusting GloBE income or loss contemplated for CEs leaving or joining an MNE Group.

Article 3.3.3 – International Shipping Income Exclusion

- Includes net income of a CE from:
  - Transportation of passengers/cargo by ships operating in international traffic,
  - Transportation of passengers/cargo by ships operated in international traffic under slot–chartering arrangements;
  - Leasing a ship to be used for the transportation of passengers/cargo in international traffic on fully equipped charter;
  - Leasing ship on bare boat charter basis for use of transportation of passengers or cargo in international traffic to another CE;
  - Participation in a pool, a joint business or international operating agency for transportation of passengers/cargo by ships in international traffic; and
  - Sale of a ship used for transportation of passengers/cargo in international traffic provided ship held for use by the CE for a minimum of one year.
- Not applicable to extent net income obtained from operations via **inland waterways in same jurisdiction**.

Meet Your Presenters

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