OECDがBEPS2.0の第2の柱に係る運営指針と第1の柱に係るタイムラインの更新を発表

2024年1月17日
第1号

概要

OECD/G20のBEPSに関する包括的枠組み（IF）により、2023年12月18日、税源浸食と利益移転（BEPS）2.0に係る以下の文書が発表されました。

(1) 第2の柱におけるグローバル税源浸食防止（GloBE）ルールに関する運営指針（Administrative Guidance、以下「本運営指針」）の第3弾
(2) 第1の柱の利益Aに関するタイムラインの更新[1]。

本号ニュースフラッシュでは、上記文書の概要とそれに対する私どもの考察をお伝えいたします。なお、より詳細な解説については、PwC Global Tax Policy Alert[2]をご参照ください。

詳細

運営指針

本運営指針は、2024年に一部の国・地域で施行されるGloBEルールの運用について、さらなる明確化を図るものです。2023年2月及び同7月に発表された第1弾、第2弾の運営指針とともに、本運営指針は2024年に改訂版GloBEコメンタリーに組み込まれ、これにより2022年3月発表の旧コメンタリーに取って代わることになります。本運営指針の主なポイントは次のとおりです。

経過措置としてのCbCRセーフハーバーに関する追加のガイダンス

経過措置としてのCbCRセーフハーバーは、一定の条件とテストをクリアすることを前提として、限られた期間にわたり、実効税率（ETR）を決定する上で国別報告書（CbCR）のデータを使用することを多国籍企業グループに認めるものです。

本運営指針は、セーフハーバーの設計と運用についてさらに明確化しています。主な項目は次のとおりです。

- 同一の国・地域に所在する構成事業体と単体のジョイントベンチャー（JV）又はJVグループは、経過措置としてのCbCRセーフハーバーの適用を判定する上で、別々のテスト対象国・地域として扱われます[3]。例えば、同一の国・地域に所在する構成事業体（10社）と単独JV（2社）及びJVグループ（2グループ）とを有する多国籍企業グループは、セーフハーバー適用の判定上、5つのテスト対象国・地域を有することになります。

- 経過措置としてのCbCRセーフハーバーの計算に使用する構成事業体のデータは、同一の適格財務諸表から取得しなければなりません。なお、同一のテスト対象国・地域にある構成事業体のデータは、同一種別の適格財務諸表から取得しなければなりません。ただし、重要性の低い構成事業体（NMCE）及び恒久的施設（PE）のデータについてはGloBEコメンタリー又は運用指針で特に認められている任意のデータソースから取得することができます[4]。他方で、同一のテスト対象国・地域にない構成事業体のデータは、国・地域ごとに異なる適格財務諸表の数値に基づくことができます。

- 適格 CbCR は、全世界ではなく、国・地域ごとに判定されるため、ある国・地域において適格性の基準を満たしていないからといって、多国籍企業グループ全体がセーフハーバーの適用から除外されることはありません。

- 構成事業体の個別財務諸表は、許容可能な財務会計基準（許容可能な会計基準のホワイトリスト）又は公認の財務会計基準（構成事業体が所在する国・地域の公認会計団体により一般に公正妥当と認められた一連の会計原則）に従って作成されている場合には、適格財務諸表に含めることができます。当該財務諸表が現地の法定報告目的又はその他規制上の報告目的で作成されたものであることは要求されていません。

- GloBE コメンタリー又は本運営指針で特に調整が要求されている場合を除き、多国籍企業グループがセーフハーバーの計算を行うにあたって適格財務諸表の数値に調整を加えることは、その調整が CbCR データを GloBE ルールとより整合させることを意図したものであるか否かに関わらず、認められません。

- GloBE ルールの適用対象であるが CbCR[5] の提出義務がない多国籍企業グループについても、CbCR の提出義務があると仮定したときに報告したであろう適格財務諸表の数値を用いて GloBE 情報申告書の該当項目を記入する場合には、CbCR セーフハーバーの適用対象となります。

- PE について適格財務諸表が入手できない場合、多国籍企業グループは、財務報告、規制、税務報告又は内部管理・統制の目的で PE について作成された個別財務諸表を使用することができます。

- 簡易実効税率テストにおいて、過年度税金費用の調整（過年度の税金費用について報告された金額を最終確定金額と一致させるための調整で、いわゆる「税金引当金の調整」）は、その調整が不確実な税務ポジションに関するものでない限り、税金費用に含めなければなりません。なお、PE が所在する国・地域（PE 国・地域）における PE の所得に対する税金費用は、PE 国・地域にのみ配分されなければなりません [6]。

- ルーティン利益テストでは、多国籍企業グループは、経過税率 [7] を考慮した上で、GloBE ルールで適用されるのと同率で実質ベースの所得除外額（SBIE）を計算する必要があります。

- 2022 年 12 月 15 日（すなわち当初のセーフハーバーガイダンスの公表日）以降に締結されたハイブリッド型裁定取引の取り決め（hybrid arbitrage arrangements）については、租税回避防止措置が設けられています。本運営指針では「ハイブリッド型裁定取引の取り決め」を次のいずれかに該当するものとして定義しています。

  (i) 損金算入/益金不算入の取り決め（a deduction / non-inclusion arrangement）
  (ii) 損失の二重計上の取り決め（a duplicate loss arrangement）
  (iii) 税金費用の二重認識の取り決め（a duplicate tax recognition arrangement）

  あるテスト対象国・地域についてセーフハーバーの計算を行うにあたっては、次のとおり調整しなければなりません。

  (1) 損金算入/益金不算入の取り決め又は損失の二重計上の取り決めにより生じた費用・損失を当該国・地域の税引前損益（PBT）から除外する。

  (2) 税金費用の二重認識の取り決めから生じた税金費用を当該国・地域の税金費用から除外する。

  本運営指針では、セーフハーバー適格性は、ハイブリッド型裁定取引の取り決めの各当事者が同一の方法で取引を処理したとの仮定に基づいて判断されなければならないとの一般規定を設けています。したがって、ハイブリッド型裁定取引のアレンジメントに対する取り扱いに一貫性がない限りにおいて、ある国・地域でセーフハーバー適格であっても、セーフハーバーは適用されないことになります。

  ある国・地域が、憲法上の理由又はその他の上位法に基づいて、2022 年 12 月 15 日以降に締結された取引を参照して上記のガイダンスを適用することができない場合、当該国・地域は、「2022 年 12 月 15 日」を「2023 年 12 月 18 日」と読み替えて、上記のガイダンスを採用することができます。

  また、「本運営指針で扱われるものを含め、経過措置としての CbCR セーフハーバーの文脈以外で GloBE ルールの適用に影響しうるハイブリッド型裁定取引の取り決めに対処するため、追加のガイダンスが提供される予定である」との記載も盛り込まれています。

***考察：**本運営指針で明確化された項目には幾つか朗報といえるものがある一方で、多国籍企業グループがセーフハーバー評価において行うべき新たな調整事項（例えば、ハイブリッド型裁定取引に対抗する新たなルールなど）も導入されています。これは、IAS第12号の開示項目に取り組んでいる企業グループにとっては、年度末が近いということもあり、難しい課題となるかもしれません。企業は、この広範な裁定取引防止に係るガイダンスが、予想されるCbCRセーフハーバーの結果にもたらす影響を慎重に検討する必要があります。加えて、前述の通り、裁定取引防止ルールは、新規の取り決めだけでなく、2022年12月15日以降に修正された既存の取り決めにも影響します。*

適格財務諸表におけるパーチェス・プライス会計（PPA）調整

本運営指針では、構成事業体が経過措置としての CbCR セーフハーバーの目的で PBT を計算するにあたっては、一定の条件を満たせば、PPA 調整を反映した財務数値を使用することができるとしています。

GloBE ルールの適用

適用の基準値（閾値）となる 7 億 5,000 万ユーロの「売上」の定義

本運営指針では、会計基準の差異による売上項目の表示方法の違いから生じうる問題に対処するため、次のように明確化が図られています。

- CbCR の売上閾値と同様に、GloBE ルール適用に係る売上閾値は、多国籍企業グループの連結損益計算書における年間売上に基づきます。

- この「売上」には、財貨の引渡し又は生産、サービスの提供、その他の多国籍企業グループの通常の活動から生じる経済的便益の流入が含まれます。これは関連する会計基準に従って決定されなければならず、割引、返品、引当金の相殺が認められる場合もありますが、いずれにしても売上原価及びその他の営業費用を控除する前の金額となります。

  例えば、ある製造会社で、通常の事業活動外から付随的な受取利息を得たとします。この金額が多国籍企業グループの連結損益計算書で「受取利息」として計上され、「売上原価」及び「販売費及び一般管理費」の表示区分よりも下に計上されているとします。この場合、受取利息は、GloBE ルールの適用を判断する上での売上閾値の目的における多国籍企業グループの売上には含めてはなりません。

- また、この「売上」には、投資純益（実現か未実現かを問わない）及び特別項目・非経常項目に個別表示される収入・利得を含みます。

- 金融事業体については、金融活動の文脈において、ある項目に関して取引金額がその財務諸表にグロスで計上されない場合、最終親事業体の財務会計基準で売上類似とみなされる項目を使用しなければなりません。

最終親事業体と他の構成事業体との会計年度の不一致

GloBE ルールの適用における会計年度とは、通常、最終親事業体が連結財務諸表を作成する上で使用する会計期間です。構成事業体の会計年度が最終親事業体の会計年度と異なる場合について、本運営指針では、多国籍企業グループが連結財務諸表を作成するにあたってその不一致に対処するために使用した方法に基づいて GloBE の計算を行わなければならないと明示しています。

次の場合、当該事業体の GloBE 計算は、最終親事業体の会計年度中に終了する会計期間に基づかなければなりません。

(1) 構成事業体が最終親事業体の会計年度と異なる会計年度を使用しており、かつ多国籍企業グループの連結財務諸表に含まれていない場合（重要性の原則による除外の場合など）

(2) 単体 JV 又は JV グループの財務会計が最終親事業体の会計年度とは異なる会計年度で管理されている場合

構成事業体の会計年度と課税年度の不一致

構成事業体の会計年度と課税年度が異なる場合、調整後対象租税額は、連結財務諸表（又はその他の該当する財務諸表）で使用された方法に基づいて決定されなければなりません。会計年度と課税年度が異なる単体 JV 又は JV グループについて調整後対象租税額を決定するときも、同様のアプローチを取らなければなりません。

申告・届出の義務

経過措置の対象となる移行年度(すなわち、多国籍企業グループが GloBE ルールの適用対象となる最初の会計年度、以下「適用初年度」)について、GloBE ルールにより、GloBE 情報申告書・国内届出書の提出期限はその会計年度の終了後(通常の 15 か月から)18 か月に延長されています。本運営指針では、どの年度の申告書・届出書についてもその提出期限が 2026 年 6 月 30 日より前になることはないとしています。この救済措置は、多国籍企業グループの適用初年度の報告期間が短いために反って申告書・届出書の提出期限が早まり、多国籍企業グループと税務当局にさらなる負担がかかってしまうような状況に対処することを意図しています。

NMCE の簡易計算セーフハーバー

本運営指針は、簡易計算セーフハーバーの枠組みの一部として、NMCE の所得、売上、税額の簡易計算についてさらに明確にしています。簡易計算セーフハーバーは、多国籍企業グループが、GloBE の結果に影響を与えることなく、あるいは GloBE ルールを損なうことなく計算を簡略化できる場合、一定の複雑な GloBE の計算を回避することを認めるものです。NMCE の簡易計算セーフハーバーは年度毎に選択され、各 NMCE ごとに個別に行われます。

第1の柱のタイムラインの更新

OECDは同日に、第1の柱の利益Aを実施するための多国間条約(MLC)に関する簡潔な声明も発表しています。声明は、「包括的枠組みのメンバーは、コンセンサスに基づく解決策を達成し、2024年3月末までにMLCの条文を最終確定し、2024年6月末までに調印式を開催することを目指すという取り組みを再確認する」と記しています。MLCの条文に関する未解決の問題を解決するための作業が2024年まで続くと認識した上で、この包括的枠組み(IF)の声明は、この取り組みにはデジタルサービス税(DST)の凍結やその他関連する類似の措置(2023年末に失効予定だった)を延長する作業も含まれるとしています。

まとめ

GloBE ルールが 2024 年 1 月 1 日から発効する国・地域もある中、本運営指針は、GloBE ルールの解釈と適用に関する重要な説明を提供するとともに、適用対象となる多国籍企業グループの GloBE ルールへの移行を支援する経過措置としての CbCR セーフハーバーの適格要件に関する新たなルールをも提示しています。

OECD はさらに、包括的枠組み(IF)が追加のガイダンスを継続的に作成することを示唆しています。次のガイダンスは 2024 年前半に発表される見込みで、繰延税金負債の再計算ルールの適用に関する運営指針が含まれる予定です。ただし、ルールの適格性を判断するピアレビューの仕組みに関する詳細は発表されていません。影響を受ける納税者は、運営指針に関する今後の動向を注視し、自社の状況に関連する項目を確認する必要があります。

第 1 の柱について世界的な合意に達することができるかどうかについては不確実性がありますが、企業としてはこの方面の進展、特にデジタルサービス税(DST)を新たに導入する国・地域について、引き続き注視する必要があるでしょう。

注記

1. 本稿で取り上げた文書(本運営指針及び第 1 の柱タイムラインの更新)原文はこちらのリンクから入手可能です。
   https://www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-december-2023.pdf
   https://www.oecd.org/tax/beps/update-pillar-one-timeline-beps-inclusive-framework-december-2023.pdf

2. PwC Global Tax Policy Alert はこちらのリンクから入手可能です。
   https://www.pwc.com/gx/en/tax/newsletters/tax-policy-bulletin/assets/pwc-oecd-releases-further-pillar-two-globe-administrative-guidance.pdf

3. 「ジョイントベンチャー」(JV:Joint Venture／共同支配会社)とは、モデル GloBE ルールにおいて、最終親事業体がその所有持分の 50%以上を直接又は間接的に保有していることを条件として、最終親事業体の連結財務諸表においてその決算結果が持分法で報告される事業体をいいます。

4. 「重要性の低い構成事業体」(NMCE:Non-Material Constituent Entities)とは、その PE も含め、規模又は重要性のみを理由として最終親事業体の連結財務諸表において科目ごとに連結されない事業体であって、GloBE ルール第 1.2.2 条に従って構成事業体とみなされるものをいいます。

5. 例えば、香港に本社を置く多国籍企業グループの場合、GloBE 目的の売上閾値は(最終的な法制化次第ですが)現在 7 億 5,000 万ユーロと提案されているのに対し、CbCR 目的の売上閾値は 68 億香港ドルであるため、このようなことが可能となります。

6. 簡易実効税率テストでは、テスト対象国・地域での簡易実効税率が（定義のとおり）経過税率以上であれば、上乗せ税額（top-up tax）はゼロとみなされます。経過税率は 15%から 17%で、年度によって異なります。

7. ルーティン利益テストでは、CbCR 上の税引前利益（PBT）が GloBE ルールに従って計算された実質ベースの所得除外額（SBIE）以下であれば、上乗せ税額はゼロとみなされます。もし多国籍企業グループの当該国・地域における CbCR 上の税引前利益がゼロ又は損失であれば、常にこのテストを満たすことになり、当該国・地域の SBIE を計算する必要はありません。
モデル GloBE ルールの第 5.3 条により、ある国・地域での上乗せ税額を計算するための超過利益を確定するには、純 GloBE 所得から SBIE を控除します。SBIE は、その国・地域における各構成事業体（投資事業体を除く）の給与カーブアウトと有形資産カーブアウトの合計です。

お問合せ

本稿に関するご照会、ご質問等は下記担当者までお問合せください。

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OECD releases further Pillar Two administrative guidance and updated Pillar One timeline under BEPS 2.0

17 January 2024
Issue 1

In brief

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(1) the third set of administrative guidance (Guidance) on the global anti-base erosion (GloBE) rules under Pillar Two; and
(2) an updated timeline for Amount A of Pillar One[1].

This news flash provides an overview of the above documents and our observations thereon. For a detailed discussion, please refer to the *PwC Global Tax Policy Alert*[2].

In detail

The Guidance

The Guidance provides further clarification on the operation of the GloBE rules before they come into effect in some jurisdictions in 2024. Along with the first two sets of administrative guidance published in February and July 2023, the Guidance will be incorporated into a revised version of the GloBE commentary in 2024, thereby replacing the original commentary issued in March 2022. The salient points of the Guidance are set out below.

Further guidance on the transitional CbCR safe harbour

The transitional CbCR safe harbour allows multinational enterprise (MNE) groups to use data from their country-by-country reports (CbCRs) to determine their effective tax rates (ETR) for a limited period, subject to certain conditions and tests.

The Guidance provides further clarification on the design and operation of the safe harbour. The key clarifications are summarised below:

- Constituent entities (CEs), stand-alone 'Joint Ventures' (JVs) and JV groups located in the same jurisdiction are treated as being in separate tested jurisdictions[3]. For example, an MNE group with ten CEs, two stand-alone JVs and two JV groups located in the same jurisdiction will have five tested jurisdictions for the purposes of the safe harbour.

- The data used to perform the safe harbour computations for an entity must come from the same qualified financial statements (FS). Furthermore, the data of entities in the same tested jurisdiction must come from the same type of qualified FS, except that data of non-material CEs (NMCEs) and permanent establishments (PEs) can come from any data source specifically permitted in the GloBE commentary or the administrative guidance[4]. On the other hand, the data of entities in different tested jurisdictions may come from different sources of qualified FS.

- A qualified CbCR is determined on a jurisdiction-by-jurisdiction basis rather than globally, hence failing the 'qualifying' criteria for a jurisdiction will not preclude the whole MNE group from applying the safe harbour.

- Qualified FS can include separate FS of a CE if these FS are prepared in accordance with an acceptable financial accounting standard (a white list of acceptable accounting standards) or an authorised financial accounting standard (a set of generally acceptable accounting principles permitted by an authorised accounting body in the jurisdiction where the CE is located). There is no requirement that these FS were prepared for local statutory reporting purposes or any other regulatory reporting purposes.

- Except where an adjustment is explicitly required in the GloBE commentary or the administrative guidance, an MNE group is not allowed to adjust the data drawn from qualified FS when performing the safe harbour computations, regardless of whether such adjustments are intended to make the CbCR data more consistent with the GloBE rules.

- An in-scope MNE group that is not required to file CbCR[5] is still eligible for the safe harbour if it completes the relevant section of the GloBE information return using the data from qualified FS as if the MNE group were required to file a CbCR.

- If qualified FS are not available for a PE, an MNE group may use the separate FS prepared for the PE for financial reporting, regulatory, tax reporting or internal management control purposes.

- Under the simplified ETR test, adjustments to prior-year income tax expenses (i.e. adjustments to bring the amount reported for a prior year's income tax expense in line with the final amount of the expense, sometimes referred to as a 'return to provision') should be included in the income tax expense, unless these adjustments relate to uncertain tax positions. Furthermore, the income tax expense in the jurisdiction in which the PE is located (PE jurisdiction) on the PE's income must be allocated exclusively to the PE jurisdiction[6].

- Under the routine profits test, an MNE group should calculate its substance-based income exclusion (SBIE) amount using the same percentage as that applicable under the GloBE rules, taking into account the transitional rates[7].

- An anti-avoidance measure is in place for hybrid arbitrage arrangements entered into after 15 December 2022 (i.e. the release date of the original safe harbour guidance). The Guidance defines a 'hybrid arbitrage arrangement' as an arrangement that is:

  (i) a deduction / non-inclusion arrangement;
  (ii) a duplicate loss arrangement; or
  (iii) a duplicate tax recognition arrangement.

  When performing its safe harbour calculations, a tested jurisdiction must:

  (1) exclude from its profit or loss before tax (PBT) any expense or loss arising from a deduction / non-inclusion arrangement or duplicate loss arrangement; and

  (2) exclude from its income tax expense any amount arising from a duplicate tax recognition arrangement.

  The Guidance generally provides that eligibility for the safe harbour should be determined based on the assumption that each party to a hybrid arbitrage arrangement has treated the transaction in the same way. Accordingly, the safe harbour will not be available to the extent that inconsistent treatment of a hybrid arbitrage arrangement would otherwise result in a jurisdiction qualifying for the safe harbour.

  If a jurisdiction is unable to apply the above guidance by reference to transactions entered into after 15 December 2022 based on constitutional grounds or other superior law, that jurisdiction can adopt the above guidance as if references to '15 December 2022' were replaced with '18 December 2023'.

  There is also a statement that further guidance 'will be provided to address hybrid arbitrage arrangements, including those addressed in this Guidance, that may otherwise affect the application of the GloBE rules outside the context of the transitional CbCR safe harbour.'

Our observations: *While there are several welcoming clarifications, the Guidance also introduces new adjustments that MNE groups will need to make in their safe harbour assessments (e.g. the new rules counteracting hybrid arbitrage* *arrangements). This could be challenging coming so close to year-end for those groups grappling with IAS 12 disclosure. Businesses should carefully consider the impact of this broad anti-arbitrage guidance on the expected CbCR safe harbour outcomes. In addition, as noted above, the anti-arbitrage rules would impact not only new arrangements but also pre-existing arrangements that have been modified since 15 December 2022.*

Purchase price accounting (PPA) adjustments in qualified FS

The Guidance clarifies that CEs may use financial accounts that include the effect of PPA adjustments in the computation of PBT for transitional CbCR safe harbour purposes if certain conditions are met.

Application of the GloBE rules

Definition of 'revenue' for purposes of the EUR750 million threshold

The Guidance provides the following clarifications to address the potential issues arising from the different ways of presenting revenue items under different accounting standards:

- Similar to the CbCR revenue threshold, the GloBE revenue threshold is applied based on the annual revenue taken from the MNE group's consolidated profit and loss statement.

- 'Revenue' includes the inflow of economic benefits arising from delivering or producing goods, rendering services, or other ordinary activities of the MNE group. It should be determined in line with the relevant accounting standard, which may allow for netting for discounts, returns and allowances, but in any event before deducting cost of sales and other operating expenses.

  For example, a manufacturing company has generated ancillary interest income outside its ordinary activities. The amount is recorded as 'interest income' in the MNE group's consolidated profit and loss statement and is presented below 'cost of goods sold' and 'selling, general and administrative expenses'. In this case, the interest income should not be included in the MNE group's revenue for the purposes of the GloBE revenue threshold.

- 'Revenue' also includes net gains from investments (whether realised or unrealised) and income or gains separately presented as extraordinary or non-recurring items.

- For financial entities, which may not record gross amounts from certain transactions in their FS with respect to certain items, the item(s) considered similar to revenue under the ultimate parent entity's (UPE) financial accounting standards should be used in the context of financial activities.

Mismatch between the fiscal years of the UPE and another CE

The fiscal year for GloBE purposes is generally the accounting period used by the UPE in preparing its consolidated FS. If the fiscal year of a CE is different from that of the UPE, the Guidance clarifies that the MNE group should prepare the GloBE computations based on the method used to address the discrepancy when preparing its consolidated FS.

In the following situations, the GloBE computations for the relevant entities must be based on the accounting period that ends during the UPE's fiscal year:

(1) The CE has a fiscal year different from that of the UPE and is not included in the MNE group's consolidated FS (e.g. based on materiality grounds); or

(2) The financial accounts of a JV or JV group are maintained on a fiscal year different from that of the UPE.

Mismatch between the fiscal year and the tax year of a CE

Where a CE has a fiscal year different from its tax year, the adjusted covered taxes should be determined based on the method used in the consolidated FS (or other applicable FS). A similar approach should be taken in determining the adjusted covered taxes of a JV or JV group that has a tax year different from its fiscal year.

Filing and notification obligations

For the transition year (i.e. the first fiscal year that an MNE group comes within the scope of the GloBE rules), the GloBE rules extend the filing and notification deadline to 18 months (instead of the standard 15 months) after the end of the reporting fiscal year. The Guidance provides that the due date for filing and notification obligations for any fiscal year shall not be before 30 June 2026. This relief is intended to address situations where the MNE group has a short reporting period in the transition year, which would otherwise accelerate the filing and notification deadline and impose additional burdens on the MNE group and tax administrations.

Simplified calculations safe harbour for NMCEs

The Guidance further clarifies the simplified income, revenue and tax calculations for NMCEs as part of the framework of the simplified calculations safe harbour. The simplified calculations safe harbour allows MNE groups to avoid making certain complex GloBE calculations in situations where the calculation can be simplified without affecting the GloBE outcomes or otherwise undermining the GloBE rules. The simplified calculations safe harbour for NMCEs is an annual election and is made for each NMCE individually.

Timeline update for Pillar One

The OECD also published a brief statement on the same date regarding the Multilateral Convention to Implement Amount A of Pillar One (MLC). The statement notes that ‘members of the Inclusive Framework reaffirm their commitment to achieve a consensus-based solution and to finalise the text of the MLC by the end of March 2024, with a view to hold[ing] a signing ceremony by the end of June 2024’. In addition to recognising that work to resolve the outstanding issues on the text of the MLC will go on into 2024, the IF statement mentions that this includes work to extend the standstill on digital services taxes (DSTs) and other relevant similar measures (which was set to expire at the end of 2023).

The takeaway

With the GloBE rules taking effect in some jurisdictions from 1 January 2024, the Guidance provides important clarification as regards the interpretation and application of the GloBE rules, as well as new rules related to the eligibility for the transitional CbCR safe harbour, which would assist in-scope MNE groups with the transition into the GloBE rules.

The OECD further indicates that the IF will produce further administrative guidance on an ongoing basis. The next batch is expected to be released in the first half of 2024 and will include guidance on the application of deferred tax liability recapture rules. However, no details were released regarding the peer review mechanism to determine rule qualification status. Affected taxpayers should closely monitor ongoing developments with respect to the administrative guidance to identify items that are relevant to their circumstances.

While there are uncertainties as to whether a global agreement can be reached on Pillar One, companies should continue to monitor the development in this space, in particular the adoption of DSTs by additional jurisdictions.

Endnotes

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5. This is possible, for instance, for a Hong Kong-headquartered MNE group as the threshold for GloBE purposes is currently proposed to be EUR750 million (subject to final legislation), while that for CbCR purposes is HK$6.8 billion.

6. Under the simplified ETR test, the top-up tax is deemed zero if the simplified ETR (as defined) in the tested jurisdiction is equal to or greater than the transition rate. The transition rate ranges from 15% to 17%, depending on the fiscal year concerned.

7. Under the routine profits test, the top-up tax is deemed zero if the PBT from the CbCR is smaller than or equal to the SBIE calculated according to the GloBE rules. If the MNE group has zero CbCR profit or a CbCR loss before income tax in that jurisdiction, it will always meet this test and it will not be necessary to calculate the jurisdiction’s SBIE.

Under Article 5.3 of the model GloBE rules, the net GloBE income shall be reduced by the SBIE to determine the excess profit for purposes of computing the top-up tax in a jurisdiction. The SBIE is the sum of the payroll carve-out and the tangible asset carve-out for each CE (except for investment entities) in that jurisdiction.

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This News Flash is issued by **PwC's National Tax Policy Services** in Chinese mainland and Hong Kong, which comprises a team of experienced professionals dedicated to monitoring, studying and analysing the existing and evolving policies in taxation and other business regulations in Chinese mainland, Hong Kong, Singapore and Taiwan. They support PwC's partners and staff in their provision of quality professional services to businesses and maintain thought-leadership by sharing knowledge with the relevant tax and other regulatory authorities, academies, business communities, professionals and other interested parties.

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