



MIRAPOST

**MIRA concluded an
Employee Withholding Tax seminar
for government employees**



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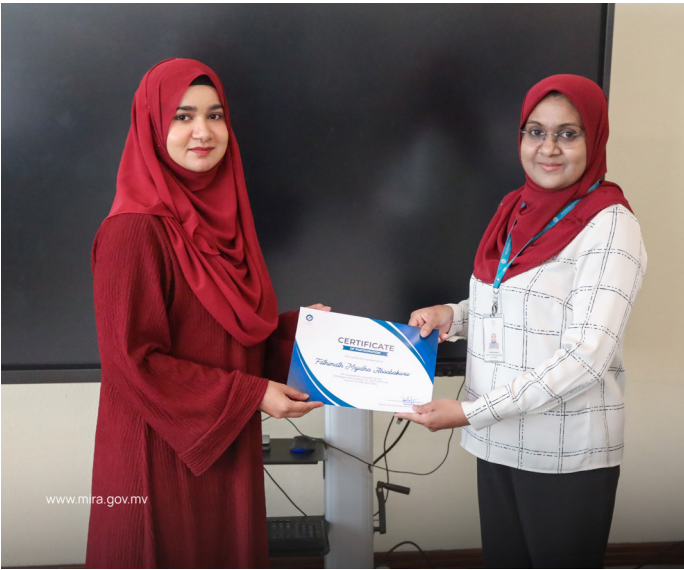
MIRA concluded an employee withholding tax seminar for government employees

MIRA has conducted an employee withholding tax seminar for government employees. The aim of the seminar was to provide information on employee withholding tax to employees working on payroll services of government offices. In addition, the seminar aimed to discuss, among the participants, about the challenges in compliance and questions related to employees withholding tax and provide assistance to maintain a robust tax compliance mechanism in government offices.

The seminar was held for two days and on the first day, 12 February 2024, 21 participants attended. On the second day, 13 February 2024, 25 participants attended. The seminar, which lasted for 8 hours each

day, provided a wealth of information on employee withholding tax including who are employees for tax purposes, how to calculate remuneration, filing tax returns and record keeping. In addition to providing information, participants were taught how to submit withholding tax returns and pay tax through MIRAconnect. Additionally, a practical session was conducted, where participants filed tax returns based on case studies. Moreover, it was also focused on clarifying how participants can troubleshoot technical issues in calculating, filing and paying withholding tax via MIRAconnect. MIRA aims to continue to conduct such seminars for taxpayers in various sectors in the future to foster an environment of voluntary compliance.







The race to the bottom

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Governments around the world are competing against each other to attract foreign direct investment (FDI) by offering reduced taxation – and often zero taxation. In addition to slashing their corporate tax bills via tax credits and tax incentives, these jurisdictions offer anonymity for corporations as a shelter from interested tax authorities. Such policy tools are backed by powerful lobbying to protect the interests of some of the wealthiest corporations in the world.

According to the Organization for Economic Cooperation and Development (OECD), the average revenues from corporate incomes and gains as a percentage of GDP for OECD countries fell from 3.6 percent to 2.8 percent between 2007 and 2014. Similarly, the average corporate tax rate of G20 countries has fallen from 40 percent in 1990 to 30 percent in 2016.

Such deregulation and tax cuts that are often hidden behind the euphemism of “competition” and implemented at the expense of public interest, are extremely harmful and contributes to profit shifting and tax avoidance.

Pillar Two of the Two-Pillar solution

Pillar 2 of the OECD/G20 Inclusive Framework on BEPS aims to end this race to the bottom. It is designed to ensure large multinational enterprises (MNEs) pay a minimum level of tax on the income arising in each jurisdiction where they operate. Pillar Two consists of two main rules that seek to ensure that multinationals pay a minimum level of tax on their profits, namely;

1. Global Anti-Base Erosion (GloBE) Rules, and
2. Subject to Tax Rule (STTR).

This article will look into the determination of the minimum level of tax under the GloBE Rules, and how this tax is collected from the relevant MNE groups.

1. Global Anti-Base Erosion (GloBE) Rules

The GloBE Rules of Pillar Two ensures in-scope multinationals pay a global effective minimum tax of 15 percent, irrespective of place of business or residency.

In a nutshell, where the **Effective Tax Rate (ETR)** paid by an entity in a jurisdiction is less than the global effective minimum tax rate of 15 percent, the GloBE Rules aim to recover the balance as **Top-up Tax** from the respective MNE group. The top-up tax is collected using **Qualified Domestic Minimum Tax (QDMT)**, **Income Inclusion Rule (IIR)** or **Under-Taxed Profits Rule (UTPR)**, which determines which jurisdiction gets the right to tax the respective low-taxed entity.

Which MNE Groups are subject to the GloBE Rules?

MNE Groups with a total consolidated group revenue of €750 million or more in at least two of the four preceding fiscal years. Entities excluded from this rule include government entities, NGOs, pension funds, and real estate investment vehicles.

1.1 Effective Tax Rate (ETR)

ETR is computed using a jurisdictional blending approach, whereby the ETR must be determined for all Constituent Entities (CEs) in each jurisdiction. The formula used to determine the Jurisdictional ETR is as follows.

$$\text{Jurisdictional ETR} = \text{Sum of Adjusted Covered Tax} / \text{Net GloBE Income}$$

If the Jurisdictional ETR is less than 15%, the jurisdiction is considered as a low-tax jurisdiction, and the constituent entities of that jurisdiction are low-taxed entities.

(a) Net GloBE Income

GloBE income is the income or loss before income tax, derived from the financial statement of each entity of the MNE Group, adjusted using a limited number of standardized adjustments. It is important to note that, GloBE income is determined at the entity level.

Once the GloBE income for each entity is determined, **net GloBE income** must be calculated using the following formula.

$$\text{Net GloBE Income} = \text{GloBE Income of all CEs} - \text{GloBE losses of all CEs}$$

Net GloBE income is calculated at jurisdictional level. The Net GloBE income is the GloBE income adjusted against GloBE losses of the CEs operated within the respective jurisdiction. This is the figure which will be used in the ETR calculation.

Computation of Net GloBE Income	
Suppose, MNE Group X operates 3 subsidiaries in Jurisdiction A.	
Constituent Entity (CE)	GloBE Income/Loss (€)
Company 1	1,000,000
Company 2	3,000,000
Company 3	900,000
Hence, Net GloBE Income is calculated as follows; $\text{Net GloBE Income} = (1,000,000 + 3,000,000 + 900,000) - 0$ $= €4,900,000$	

(b) Sum of Adjusted Covered Tax

Similar to the GloBE income, tax figures used to calculate ETR is determined based on the tax expense recorded in the financial accounts. Covered Tax is the tax attributed to the GloBE Income of each entity. This includes income taxes, tax charged under CFC, taxes imposed on distribution, surcharges on net income, Pillar 1 taxes, and tax withheld at source under a CIT regime. However, Covered Tax does not include GST/VAT, payroll taxes, property taxes and excise tax.

A number of adjustments are made to the amount derived as Covered Tax, in order to standardize the measurement for all Inclusive Framework members. Covered Tax adjusted for the purpose of Pillar Two is known as Adjusted Covered Taxes. Sum of Adjusted Covered tax must be calculated on a jurisdictional level.

Computation of Adjusted Covered Tax	
The Adjusted Covered Tax of the 3 subsidiaries operated by MNE Group X in Jurisdiction A is as follows.	
Constituent Entity (CE)	Adjusted Covered Tax (€)

Company 1	150,000
Company 2	300,000
Company 3	50,000

Hence, Sum of Adjusted Covered Tax is calculated as follows;
Sum of Adjusted Covered Tax = 150,000 + 300,000 + 50,000
= €500,000

Once the Net GloBE Income and Sum of Adjusted Covered Tax is computed, the Jurisdictional ETR can be calculated as follows.

Computation of ETR	
The ETR for Jurisdiction A of MNE Group X can be computed using the following information.	
Net GloBE Income	€4,900,000
Sum of Adjusted Covered Tax	€500,000

Recall that;
Jurisdictional ETR = Sum of Adjusted Covered Tax / Net GloBE Income

Hence, ETR for Jurisdiction A (expressed as a percentage and rounded to the fourth decimal place) is calculated as follows;
Jurisdictional ETR = (500,000 / 4,900,000) x 100
= 10.2041%

As the ETR for Jurisdiction A is less than 15%, it is considered as a low-tax jurisdiction, and Company 1, Company 2 and Company 3 of MNE Group X are low-taxed entities.

1.2. Top-up Tax

1.2.1. Jurisdictional Top-up Tax

Top-up Tax is calculated on a jurisdictional level, using the following formula.

Jurisdictional top-up tax = Top-up Tax Rate x Excess Profit

a) Top-up Tax Rate

Top-up Tax Rate is the difference between the global minimum tax rate of 15% and the ETR calculated for each jurisdiction. It is expressed as a percentage and applied to the amount of Excess Profit in order to determine the actual top-up tax dues.

Top-up Tax Rate = Global Minimum Tax (15%) – Jurisdictional ETR

b) Excess Profit

As indicated below, **Excess Profit** is the Net GloBE Income for each jurisdiction, after deducting a substance based income exclusion.

$$\text{Excess Profit} = \text{Net GloBE Income} - \text{Substance based carveout (SBIE)}$$

Substance based carveout (SBIE) is the total of:

- 5% of the constituent entities' eligible payroll costs of eligible employees that perform activities for the MNE Group in the jurisdiction, and
- 5% of the carrying value of eligible tangible assets of a constituent entity located in a jurisdiction

The purpose of the substance based income exclusion is reducing top-up tax for MNEs who carry out genuine economic activity in the respective jurisdiction. The rationale behind the specific exclusions being that payroll costs and tangible assets are good indicators of the MNE's physical footprint in the jurisdiction.

Once the Top-up Tax Rate and Excess Profit is calculated, the Jurisdictional Top-up Tax can be calculated as follows.

Computation of Jurisdictional Top-up Tax

From the ETR calculation for Jurisdiction A of MNE Group X, we can deduce the following information needed to calculate the Top-up Tax.

Net GloBE Income	€4,900,000
ETR of Jurisdiction A	10.2041%

In addition, suppose, the value of eligible tangible assets of the 3 subsidiaries of MNE Group X operated in Jurisdiction A is as follows.

Constituent Entity (CE)	Tangible Assets (€)
Company 1	3,000,000
Company 2	3,000,000
Company 3	2,000,000
	8,000,000

Step 1: Computation of Top-up Tax Rate

$$\begin{aligned} \text{Top-up Tax Rate} &= \text{Global Minimum Tax (15\%)} - \text{Jurisdictional ETR} \\ &= 15\% - 10.2041\% \\ &= 4.7959\% \end{aligned}$$

Step 2: Computation of Excess Profit

In order to calculate the Excess Profit, we have to take into consideration the total Substance based carveout allowed for the jurisdiction.

$$\begin{aligned} \text{Substance based carveout} &= 8,000,000 \times 5\% \\ &= \text{€}400,000 \end{aligned}$$

Hence,

$$\begin{aligned}\text{Excess Profit} &= 4.900.000 - 400.000 \\ &= \text{€}4,500,000\end{aligned}$$

Step 3: Computation of Top-up Tax for Jurisdiction A

$$\begin{aligned}\text{Jurisdictional top-up tax} &= (\text{Top-up Tax Rate} \times \text{Excess Profit}) \\ &= (4.7959\% \times 4,500,000) \\ &= \text{€}215,816\end{aligned}$$

Top-up Tax for Jurisdiction A is €215,816

1.2.2. Qualified Domestic Minimum Top-up Tax (QDMTT)

As defined in the Article 10 of the OECD Model Rules, QDMTT is a minimum top-up tax included in domestic law that:

- calculates the excess profits of constituent entities located in the jurisdiction in a way that is equivalent to the GloBE Rules;
- increases the domestic tax liability to the minimum rate on the domestic excess profits for a fiscal year; and
- is implemented and administered in a way that is consistent with the GloBE Rules and the Commentary.

In simpler terms, it is a domestic minimum tax on CEs of MNE Groups that operate within a jurisdiction and are in scope of the GloBE Rules. Introduction of a QDMTT ensures taxing right of the Top-up Tax is given to the source jurisdiction, before it is allocated to other jurisdictions under the IIR and UTPR.

Jurisdictions can choose to introduce a QDMTT, even though it is not compulsory to do so. If a country has introduced a QDMTT, Top-up Tax calculated for the jurisdiction must be paid to the tax authority of the respective jurisdiction.

If a country does not collect Top-up tax under a QDMTT, or if the source country fails to collect the total amount of Jurisdictional Top-up Tax under the QDMTT implemented in the country, the remaining Top-up Tax is allocated to individual CEs of the MNE Group and taxed under the IIR and UTPR.

1.2.3. Top-up Tax of a Constituent Entities (CEs)

Jurisdictional Top-up Tax that is not taxed under a QDMTT is then allocated to individual Constituent Entities in the low-tax jurisdiction. It is done so, in proportion to the GloBE Income of each Constituent Entity, using the formula below.

Computation of Jurisdictional Top-up Tax

Top-up Tax of a Constituent Entity in Jurisdiction A of MNE Group X can be computed using the following information.

Constituent Entity (CE)	GloBE Income/Loss (€)
Company 1	1,000,000
Company 2	3,000,000
Company 3	900,000
Aggregate GloBE Income of all CEs	4,900,000

As computed earlier, the Jurisdictional Top-up Tax for Jurisdiction A is €215,816. Based on this, the Top-up Tax of a CE in Jurisdiction A is calculated as follows.

Company 1

$$\begin{aligned}\text{Top-up Tax of Company 1} &= \text{€}215,816 \times (1,000,000 / 4,900,000) \\ &= \text{€}44,044\end{aligned}$$

Company 2

$$\begin{aligned}\text{Top-up Tax of Company 2} &= \text{€}215,816 \times (3,000,000 / 4,900,000) \\ &= \text{€}132,132\end{aligned}$$

Company 3

$$\begin{aligned}\text{Top-up Tax of Company 3} &= \text{€}215,816 \times (900,000 / 4,900,000) \\ &= \text{€}39,640\end{aligned}$$

Even though the Top-up Tax is attributed to each low-taxed CE, it does not mean the CE has to bear the burden of paying the top-up tax, or that the tax will be paid to the tax authority of the jurisdiction in which the CEs operate in. Which entity of the MNE group pays the top-up tax attributed to low-taxed CEs, and which government the dues are paid to are determined using the **Income Inclusion Rule (IIR)** and the **Under-Taxed Profits Rule (UTPR)**.

1.3. Income Inclusion Rule (IIR)

Under the Income Inclusion Rule (IIR), the burden of paying the top-up tax of low-taxed CEs falls on its **Ultimate Parent Entity (UPE)**. If IIR is not implemented in the jurisdiction where the UPE of the low-taxed CE resides, the burden then falls on the **Intermediate Parent Entities** of the low-taxed CE. This is known as the **top to bottom approach**.

Parent Entities are not obligated to pay the full amount of Top-up Tax of the low-taxed CEs. The parent entities pay top-up tax based on its **Allocable Share of Top-up Tax**. The share of top-up tax is allocated based on the ownership interest of the parent entity in a low-taxed CE.

In cases where the full amount of top-up tax, or a part of it cannot be collected from any parent entity, the **Under-Taxed Profits Rule (UTPR)** comes into effect.

1.4. Under-Taxed Profits Rule (UTPR)

UTPR, the liability to account for Top-up Tax which are not allocated under IIR, falls on jurisdiction where the constituent entities are located. This is done either by denial of deduction, or by making other equivalent adjustments.

When UTPR is implemented through denial of deduction, the low-taxed entity will be denied tax deductions equivalent of the top-up tax amount allocated to the low-taxed entity under the UTPR, when filing their tax return in the low-taxed jurisdiction they reside in. The deduction need not be connected with the low-taxed entity or any other CE.

When UTPR is implemented through other equivalent adjustments, the nature of such adjustments will be determined by the domestic low-tax jurisdiction. The main course of action for such adjustments are the implementation of a separate tax on the low-taxed entity, or a deemed increase in the taxable income of the low-taxed entity.

1.5. Administration of the GloBE Rules

Step 1: The Ultimate Parent Entity (UPE) or Designated Filing Entity files the GloBE Information Return with the Tax Administration of the resident jurisdictions.

Step 2: This information is then exchanged with all affected jurisdictions through Exchange of Information (EOI).

1.6. Implementation of the GloBE Rules

GloBE Rules will be implemented through a common approach. Countries may choose to implement the IIR or UTPR by adopting the model rules to the domestic legislation. A peer review will be carried out to ensure countries implement and administer the Pillar 2 rules in a way that is consistent with the outcomes provided under the GloBE Rules and the Commentary.

In addition, provisions of EOI and other administrative provisions of the domestic law must be amended in line with the administrative process of the GloBE Rules



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