

BEPS Pillar 2 Bytes

Purely domestic groups covered under UAE's Pillar 2 rules – potentially?

- Application of Pillar 2 Global Anti-Base Erosion Model Rules (GloBE Rules) is essentially associated with a “multinational enterprise” (MNE) meeting certain specifications. Such MNE Groups are sought to be brought under the purview of 15% global minimum tax by virtue of the GloBE Rules.
- As per the GloBE Rules, an MNE Group is defined as a group of entities (or permanent establishments) having presence in **one or more jurisdictions other than jurisdiction of the Ultimate Parent Entity (UPE)** and included in the consolidated financial statements of UPE.
- UAE Ministry of Finance (MOF) in its FAQ (No. 350)¹ states that multinational corporation is defined as a corporation that operates in its **home country, as well as in other countries** through foreign subsidiaries, branches or other entity forms of presence / registration.
- MNE definition as above indicating a multi-jurisdictional presence, is in consonance with the Country-by-Country Reporting (‘CbCR’) as per BEPS Action Plan 13 codified in UAE vide Cabinet Resolution No. 44 of 2020². This aligns with the broad intent to apply Pillar 2 to Groups which comply with the CbCR regulations.
- While the focus of GloBE Rules and CbCR Regulations (also endorsed by MoF’s FAQs) is to ensure that MNE groups having presence in more than one jurisdiction pay their fair share of taxes, interestingly, a bare interpretation of definition of ‘multinational enterprise’ introduced in UAE CT Law³ indicates a much wider approach. It does not limit the scope to MNE groups with multi-jurisdictional presence and seems to also cover groups having presence in UAE alone. Extracts of definition reproduced below –

*An entity and/or one or more of its member entities **located in the State or in a foreign jurisdiction**, as specified in a decision to be issued by the Cabinet at the suggestion of the Minister. (Emphasis supplied)*

- It may be noted that the Commentary on GloBE Rules provides a flexibility to countries to apply minimum tax to domestic groups⁴. This option is being considered by few countries and seems to be adopted by UAE also.
- UAE's definition of MNE Group indicates a departure from the FAQs published by the MOF, potentially indicating applicability of UAE's Pillar 2 rules on purely domestic groups. However, the detailed rules are awaited, and it will be interesting to watch out UAE Government's stand on the aspect.
- It is still important to note that application of Pillar 2 is envisaged on "large" MNE Groups meeting the revenue threshold of AED 3.15 billion/ Euro 750 million as specified in the GloBE Rules⁵. The revenue threshold is another key criterion to trigger Pillar 2 application. We will discuss the revenue threshold, manner of its computation and related issues in the forthcoming Bytes.

¹ Source: FAQ published by UAE's Ministry of Finance (www.mof.gov.ae)

² Source: www.Mof.gov.ae

³ Federal Decree-Law No. 60 of 2023. Refer MMJS Alert 'UAE Corporate Tax law's first amendment to introduce BEPS 2.0 Pillar 2' dated 4 December 2023

⁴ Refer Commentary on Article 2.1.6 of the GloBE Rules (Source: www.oecd.org)

⁵ EUR 750 million or more as per CFS of UPE in at least two out of four preceding fiscal years – to be adjusted proportionately in case the FY followed by the group is of a period other than 12 years.

For more information, please get in touch with our team.

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