

By Email angel.pantoja@hacienda.pr.gov

October 10, 2024

Mr. Angel L. Pantoja-Rodríguez, Esq.
Assistant Secretary
Internal Revenue and Tax Policy Areas
Department of the Treasury
Government of Puerto Rico
San Juan, Puerto Rico

**RE: Public Consultation
Implementation of Pillar Two
GloBE Rules in Puerto Rico**

Dear Assistant Secretary:

Comes now Kenneth Rivera-Robles and as an interested party, we are enclosing some comments regarding the above-mentioned public consultation¹.

Section 1

A.1. Do you agree with the guiding principles described above? Please indicate any other principles that should be considered.

Partially. First, we have a concern with proposed compliance with international standards such as the GloBE Rules since Puerto Rico is not part of the OECD and really has no way of participating in those discussions. We conceptually do not agree with the principle of adherence to standards where we have no way of influencing or changing the standards.

Furthermore, this assumes that the GloBE Rules are sound tax policy. However, they have been completely or partially challenged by various groups including US Congress², the United

¹ Our curriculum vitae is included as Exhibit 1.

² Letter from September 17, 2024, sent by members of the US Congress to the Secretary General of the OECD.



Nations³, the Tax Foundation⁴ and the US Chamber of Commerce⁵. Furthermore, it has been claimed that the GloBE Rules are not technically consistent and that they lack consistent policy goals⁶. The GloBE Rules have additional issues since they do not have a clear scope, use exemptions in an inconsistent manner, and they even have legal loopholes⁷.

Also, the GloBE Rules arise from the premise that countries that use tax incentives to promote foreign direct investment do so purely as a matter of choice. In a lot of cases this is not a matter of choice but rather the only available resource that countries have, and the GloBE Rules fail to address that situation⁸. In particular “it presents a challenge to less-developed countries which are still in the process of improving their economies and require international capital to stimulate their growth”⁹. Also, “a country that opens up its economy to FDI faces the risk that come with a dependency on foreign capital that might be diverted elsewhere”¹⁰.

Furthermore, we do not necessarily agree with the neutrality principle that the Financial Oversight Management Board (“FOMB”) has adopted in the 2024 Fiscal Plan (“the Fiscal Plan”)¹¹. Finally, another concern that we have is that we should consider the contractual nature of the tax exemption decrees between the Government of Puerto Rico and the tax decree holders which is included in the Bill of Rights of Decree Holders and is mentioned in the Puerto Rico Incentives Code (“INCode”)¹².

We concur with the proposal of other groups that at this point in time the approach should be to manage the current situation under which MNEs with parent companies that are located in countries that are members of the European Community (“EC”) who will be imposing the GMT under the IIR in calendar year 2024 as required by Council Directive (EU) 2022/2523 (“GloBE

³ Letter from January 11, 2024, sent by UN experts in Human Rights to the Secretary General of the OECD.

⁴ Cole, Alan, Puerto Rican Competitiveness and Pillar Two, Tax Foundation, July 2024.

⁵ On September 30, 2024 the US Chamber announced that it supports the legal action brought in the Belgian Constitutional Court challenging the undertaxed profit rule (“UTPR”) which is another provision of the GloBE Rules.

⁶ Bendlinger, Valenting, The OECD Global Minimum Tax and its Implementation in the EU, Par 4.5.8.

⁷ Also see Par. 4.5.6.

⁸ Kuzniacki, Blaze & Visser, Edwin, Tax and Not Tax Related Challenges of Pillar 2 for Non-Advanced Economies, Tax Notes, May 6, 2024.

⁹ Haslehner, Werner et al, The Pillar Two Global Minimum Tax, Par. 2.39.

¹⁰ Avi-Yonah, Reuven, Tax Harmony: The Promise and Pitfalls of the Global Minimum Tax, 43 Michigan Journal of International Law, Pg 212.

¹¹ See Paragraph 3.2.4.1 of the Fiscal Plan. Historically the FOMB has adopted a revenue neutrality principle which requires that any proposed tax reductions must be accompanied by specific revenue measures that ensure the level of revenue. It is our contention that the guiding principle should be deficit neutral where the alternatives would include new taxing measures or identified reductions in government spending.

¹² See Section 1000.04 of the INCode.



Directive”)¹³. Later it would be advisable to try to develop a more reasonable and equitable long term legislative solution. However, at this point in time we should concentrate our efforts in the situation at hand and that solution should be adopted as soon as possible¹⁴. As it has been mentioned in a publication “Puerto Rico does not have easy solutions to Pillar Two”¹⁵.

Two bills (“the Bills”) have been presented in the last year by our local legislature to address this issue by adopting a short-term solution as previously mentioned¹⁶. Unfortunately, after a considerable amount of time and effort by the government, the companies and their representatives and various trade associations, none of the bills were approved. This situation put a lot of stress in our local credibility because some companies were expecting that one of the Bills would be approved.

A.2. Do you agree that the IIR and/or UTPR should not be introduced in Puerto Rico at this stage?

Yes, we agree that a local IIR and/or UTPR should not be introduced at this stage. This would add a layer of complexity to the regime because Puerto Rico would have to adopt rules to make the country-by-country analysis. Furthermore, it would make the Island even less competitive. At this moment in time the main issue would be how to react to the provisions that commenced in calendar year 2024. This does not preclude doing a more careful analysis in the future, but not at this point in time.

B.1. Do you think that introducing a QDMTT would affect negatively the investment decisions of MNE Groups in Puerto Rico? If you think that a QDMTT would have an adverse effect on investment, please explain the type of jurisdictions, including their tax system, that would attract such investment.

Yes, we understand that an increase in the local tax obligations would make Puerto Rico less competitive. Bear in mind that Puerto Rico has higher salaries and compliance costs than other jurisdictions that compete with us in the Caribbean, Central and South America, and Asia. Jurisdictions that come to mind include Dominican Republic, Costa Rica, Brazil, and Mexico.

¹³ GloBE Directive Arts. 56 and 50(2).

¹⁴ Paragraph 2.4.5 of the Fiscal Plan & Cole, Alan, Puerto Rican Competitiveness and Pillar Two, Tax Foundation, July 2023..

¹⁵ Cole, Alan, Op Cit.

¹⁶ HB 1908 and HB 1574.



B.2. Do you see any benefit in applying a QDMTT with an SBIE? If you represent an in scope MNE Group, would the SBIE provide a considerable reduction in the Top-up Tax considering your assets and personnel in Puerto Rico?

We do not favor the adoption of a QDMTT now. However, if a QDMTT is adopted it would make sense to do it following the same rules that have been adopted by other jurisdictions.

B.3. Do you see any benefit in introducing a QDMTT (rather than a DMTT or alternative minimum tax) from an administration point of view?

As mentioned, we do not favor the adoption of a QDMTT.

B.4. Please provide any other comments related to the introduction of a QDMTT.

No additional comments.

C.1. For those representing in-scope MNE Groups.

No Comment since we are not an MNE Group.

C.2. Do you see any issues with a QDMTT being applied to Constituent Entities organized in Puerto Rico that are considered Stateless?

No Comment since we are not an MNE Group.

C.3. Do you have any views on whether a QDMTT should be applied to Investment Entities?

No Comment since we are not an MNE Group.

C.4. What is your preference:

(1) A QDMTT computed in accordance with the UPE's Financial Accounting Standard?; or (2) A QDMTT computed in accordance with U.S. GAAP where the Constituent Entities already have financial statements based on this standard?

No Comment since we are not an MNE Group.

C.5. Please indicate if there are other optional variations described in the Commentary on Article 10.1 (definition of a QDMTT) of the GloBE Model Rules that should be considered for purposes of designing a QDMTT for Puerto Rico.

No Comment since we are not an MNE Group.



D.1. Do you think an alternative form of domestic minimum tax would be a better option than a QDMTT for Puerto Rico? Please explain your answer.

Even though we do not favor the adoption of a QDMTT, we think that the adoption of DMT would not be a prudent idea now. As previously mentioned at this point in time we think we should address the immediate concerns of the 2024 adoption of the GMT by members of the EC. Any long-term solution which may or may not include a DMT should be considered eventually.

D.2. What are your views on the key features of an alternative form of a domestic minimum tax for Puerto Rico? Please explain your answer.

We would have a concern about the interaction of a DMT with the contractual natures of the tax exemption decrees. In our opinion the adoption of a DMT for companies with a tax exemption decree would violate the contractual nature of the tax decrees.

D.3. Do you see any issues related to timing differences if a DMT is introduced?

We do not recommend adopting a DMT at this point in time due to the reasons expressed in the previous question. Furthermore, even though a new tax imposition can be adopted with retroactive effect, we are also aware that it is not an advisable tax policy¹⁷.

E.1. Do you think there are tax incentives in Puerto Rico that could be modified to receive better treatment under the GloBE Rules?

Probably our long-term solution would have to reconsider our current tax exemption regime. It has been proposed that it might be beneficial to eventually adopt a broad base low-rate regime in the future. However, such change should be done, as mentioned, at a later time after careful consideration and analysis including conversations with the appropriate stakeholders.

E.2. In addition to QRTCs, do you think there are other tax incentives that can be applied in the Corporate Income Tax that should be explored?

It would be advisable to consider the effect other tax incentives such as accelerated depreciation and exempt income. As noted above this analysis should be done later.

E.3. Do you see tax incentives available in other jurisdictions that have favorable treatment under the GloBE Rules that could be introduced in Puerto Rico?

¹⁷ Slemrod, Joel [Why People Pay Taxes: Tax Compliance and Enforcement](#)



We are not aware of other incentives that might work that are being introduced by other jurisdictions.

E.4. Do you see any areas of opportunity where Puerto Rico can invest or provide benefits to increase its competitiveness, particularly among in-scope MNE Groups, while complying with the GloBE Rules, other international standards, and PROMESA?

This juncture drives us to rethink our strategies to attract foreign direct investment. This will require a complete analysis of various factors such as quality of infrastructure, cost of utilities, labor availability, improvements in education, simplification of permits and registrations, availability of financing services and transfers of real property¹⁸.

SECTION 2

A.1. Do you see any issues in legislating a tax by reference to a document published by an international organization?

Yes, there are various areas of concern. First, if we are referring to a document published by the OECD it should be remember that Puerto Rico is not a member of such organization. Non-member countries may have no say in the creation or modification of such international documents, raising concerns about the lack of representation. Research published by political scientists points out that international standards may not always reflect the economic realities or values of countries that have not participated in their creation. Second, there seems to be a disconnect between the OECD and the developing countries regarding the expectation that they compete with developing countries in the attraction of foreign investment. Furthermore, even though the United States treats and recognizes Puerto Rico as a separate taxing jurisdiction, it is not clear whether the OECD and the members of the organization would do the same or consider us part of the United States. There is uncertainty regarding how the OECD and other countries will acknowledge Puerto Rico's fiscal autonomy¹⁹. Third, there are sovereignty concerns. Pursuant to the Puerto Rico Constitution ("PRConstitution") the power to tax is delegated to the Legislative Assembly which means that any new taxes or changes to the existing ones must be enacted by law through the legislative process²⁰.

¹⁸ Wold Bank Group, Business Ready 2024 and KPMG et al., Cost of Manufacturing Operations Around the Globe can be used as a starting point for this analysis.

¹⁹ Cole, Alan, op cit..

²⁰ Article VI, Section 2 of the PRConstitution.



A.2. Do you see any issues in referring to a document that is only in English and French, not in Spanish?

No, we do not see any issue.

A.3. If Puerto Rico introduces a QDMTT, would you prefer adoption by reference to the GloBE Model Rules or would you prefer that the relevant provisions be incorporated into the legislation?

Even though we do not favor the adoption of a QDMTT, in this context we would prefer the inclusion of the text of the relevant provisions and not the adoption by reference. As discussed below we are not member of the OECD so it does not seem reasonable to adhere to OECD provisions that we cannot adopt, oppose, or amend.

A.4. Do you have any other specific comments on this issue?

No Comment.

B.1. Do you see any issues in using the Euro as the relevant currency for purposes of applying a QDMTT or another form of domestic minimum tax?

No, we do not see any issue.

B.2. Do you have any other specific comments on this issue?

No Comment.

C.1. Do you see any issues, including legal, accounting or administrative issues, regarding legislation involving a QDMTT or another form of domestic minimum tax and tax incentives that would apply as of Fiscal Year 2024, if approved by the end of 2024 or 2025?

As mentioned, we have an issue for year 2024 since some companies located in Puerto Rico will be subject to the GMT by reason of the IIR as adopted under the GloBE Directive. Therefore, we concur that such issue should be addressed in way that it applies for year 2024. We understand that any change that is adopted should be done so in a matter that it does not affect the current tax situation of MNEs that have parent companies in other jurisdictions, in particular in US which encompasses the majority of them.

D.1. Do you have any comments on the interaction between the existing tax incentive decrees and a new tax regime that could include a QDMTT or another form of domestic minimum tax, and a new tax incentive package that could be provided a wide group of taxpayers?



In 2010 Puerto Rico enacted Act 154-2010 (“Act 154”). Act 154 imposed an additional 4% excise tax on products manufactured in Puerto Rico. This excise tax was in addition to the taxes imposed under the decree. The economic burden of the excise tax was mitigated by the adoption of various tax credits and by the interpretation by the Internal Revenue Service (“IRS”) that such excise tax was creditable at the foreign level as an income tax²¹. Act 154 left us with two big lessons. First, that new taxes could be structured in a manner that would not be covered by the tax exemption decrees. Second, even though the tax exemption decrees can be circumvented, it is not an advisable idea to do so. Act 154 had a very detrimental effect on the investment climate in the Island and caused a lot of stress in the relationship between the companies that invest in Puerto Rico and the local government. We urge the government to consider that situation and to try to the extent possible avoiding a proposal that would affect the confidence of the investors in the Island.

The comments presented herein are only ours and do not necessarily reflect the comments of our company, our clients or any other organization that we are members of. If you have any questions or concerns, please feel free to contact us at kenneth@galindezllc.com

Cordially,

A handwritten signature in blue ink, appearing to read "Kenneth Rivera-Robles", with a stylized flourish at the end.

Kenneth Rivera-Robles
Tax Partner

²¹ IRS Notice 2011-29. Eventually the IRS changed that position and determined that such amount was not going to be creditable anymore. REG-101657-20; 2020-49 IRB 1466.



Exhibit 1

Kenneth Rivera-Robles

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Kenneth Rivera-Robles graduated Magna Laude from the Business School of the University of Puerto Rico, Río Piedras Campus, with a specialty in Accounting and Information Systems (1988). Later he graduated Cum Laude from the University of Puerto Rico School of Law (1991). He holds a Certificate in Comparative Tax Policy and Administration from the Harvard Kennedy School of Government (2016). He is a Certified Public Accountant, Licensed Attorney and a Notary Public. He is also a CVA ("Certified Valuation Analyst"), CGMA ("Chartered Global Management Accountant"), CM&AA ("Certified Mergers and Acquisitions Advisor"), Certified Mediator and Supreme Court Certified Arbitrator. He holds a Certificate in Sustainability Fundamentals (ESG) from AICPA (2023).

He is a partner in the tax practice of Galindez LLC. Since 1990 he has worked as a consultant in tax and financial matters. He has extensive experience working with choice of entity and business structuring, tax reorganizations, tax incentives, international taxation, US federal and state taxation, tax audits and interventions, municipal taxation (volume of business, property taxation and municipal construction excise taxes), tax policy issues and general consulting services. He has been a consultant to several private companies (local and international), non-profit entities, trade leagues, the Puerto Rico Senate, the Puerto Rico House of Representatives, and the Department of Treasury.

From 1997 to 2004 and during 2011 he was a professor of Puerto Rico Taxes at the Business School of the University of Puerto Rico (Río Piedras). Since 2007 he has been a professor of Tax Law, Legal Accounting, Tax Incentives, and Special Topics of Tax Law (Consumption Tax / Municipal Taxes) at the University of Puerto Rico School of Law. Since 1998 he has been an instructor of federal taxes and business law in Becker CPA Review course for CPA exam candidates.

He was president of the Puerto Rico CPA Society (2012-2013). He has also been first and second vice-president of the Governing Board of said institution and has chaired its Tax Affairs and Legislation committees on more than 12 occasions. He was president (2018-2019) of the Puerto Rico Chamber of Commerce. He was also president-elect and treasurer of that entity. Since 2019 he has been a member of the Executive Committee (Treasurer and Secretary) of the Puerto Rico



Manufacturers Association. He was chairman of the Board of Directors of the Puerto Rico Sewer and Aqueduct Authority (2013-2016).

He frequently collaborates with the media (newspaper, radio and television) in the discussion of tax, financial and business issues. In 2015, he was chosen by the Senate of Puerto Rico as the representative of the private sector on the Commission to Evaluate Alternatives to Transform the Consumption Tax ("CATIC"). In 2021, he was appointed by the Governor of Puerto Rico to the Advisory Group to Simplify and Improve the Tax System in Puerto Rico.