



GOVERNMENT OF PUERTO RICO

Department of the Treasury

Public Consultation on the Implementation of the Pillar Two GloBE Rules in Puerto Rico

Background

A) The Pillar Two GloBE Rules

In October 2021, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (“IF”) reached an agreement on a two-pillar solution to address the tax challenges arising from the digitalization and globalization of the economy, which has been agreed by 139 member jurisdictions of the IF as of June 9, 2023. The two-pillar solution is composed of Pillar One and Pillar Two.

Pillar One focuses on the reallocation of taxing rights over the profits of the largest and most profitable multinational enterprises to market jurisdictions, and the simplification of the arm’s length principle to in-country baseline marketing and distribution activities.

Pillar Two ensures that particular taxpayers are subject to a minimum level of taxation. Pillar Two is divided into the Subject to Tax Rule (“STTR”) and Global Anti-Base Erosion Rules (the “GloBE Rules”). The STTR is a tax treaty rule that restores taxing right to source jurisdictions where particular transactions are subject to an adjusted nominal rate below 9%. The GloBE Rules are composed of interlocking rules incorporated in domestic tax legislation that seek to ensure that MNE Groups with annual revenues of EUR 750 million or more are subject to a minimum level of taxation of 15% regardless of the jurisdictions where they operate.

The GloBE Rules are comprised of the Income Inclusion Rule (the “IIR”) and the Undertaxed Profits Rule (the “UTPR”), which provide for special treatment of Qualified Domestic Minimum Top-up Taxes (“QDMTTs”). The IIR operates similarly to Controlled-Foreign-Corporation Rules (“CFC Rules”) given that it requires a parent entity to collect the Top-up Tax calculated for subsidiaries located in low-taxed jurisdictions. The UTPR is a backstop rule that ensures that any amount of Top-up Tax owed by the Ultimate Parent Entity (“UPE”) of the MNE Group that is not otherwise collected within the MNE Group is collected by the group entities located in jurisdictions that have the UTPR.

The QDMTT is a Top-up Tax that applies to profits in the jurisdiction of the subsidiary that generates them. It allows low-taxed jurisdictions to collect the Top-up Tax that would generally be otherwise collected under the IIR or the UTPR. The calculation of the QDMTT is the same as the one under the GloBE Rules with a few exceptions. The GloBE Rules provide favorable treatment to QDMTTs given that the amount of the QDMTT is a dollar-for-dollar reduction from the GloBE tax liability (similar to a foreign tax credit). It also allows QDMTT jurisdictions to provide for the



same Substance-based Income Exclusion (“SBIE”) as the one provided under the GloBE Rules without an adverse effect on the Effective Tax Rate (“ETR”) calculation.

The GloBE Rules and the QDMTT require MNE Groups to undertake at least two similar calculations in accordance with two sets of domestic legislation: one in the jurisdiction applying the GloBE Rules and the other in the jurisdiction applying the QDMTT. Where the QDMTT meets particular standards, the MNE Group can apply the QDMTT Safe Harbour without the need of the additional computations in the jurisdiction applying the GloBE Rules (e.g., the UPE jurisdiction).

A Domestic Minimum Top-up Tax (DMTT) that departs from the GloBE calculations will not be considered a QDMTT except where those deviations are considered as mandatory or optional variations agreed by the IF. While such DMTT will not be subject to a special treatment under the GloBE Rules, it is possible that it could still to be considered a Covered Tax for purposes of the ETR calculations provided that it meets particular requirements such as being considered a Tax on corporate income. Jurisdictions have the sovereign right to decide how to react to the implementation of the GloBE Rules and whether they introduce a QDMTT, a DMTT or make other changes to their Corporate Income Tax system.

More information about the GloBE Rules and the QDMTT can be found on the OECD website: <https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html>

B) Puerto Rico’s Corporate Income Tax

The Puerto Rico corporate income tax regime may apply differently based on the corporate structure and organization of the taxpayers. Very broadly, the general rules may be summarized as follows: (i) a domestic corporation is taxed on its worldwide income; (ii) a foreign corporation engaged in a trade or business in Puerto Rico is taxed on income from Puerto Rico sources that is effectively connected income; and (iii) a foreign corporation not engaged in a trade or business in Puerto Rico is taxed typically at a 29% income tax withholding at source on the gross income received from Puerto Rico sources.

The corporate income tax rate structure is comprised of an 18.5% ordinary tax plus a surtax which includes graduated rates from 5% through 19%, for a maximum tax rate of 37.5%. While the general rule includes the ordinary tax and surtax, certain corporations in Puerto Rico may benefit from special tax regimes on eligible income. Such special tax regimes and the determination of eligible income has been part of the Puerto Rico tax system through the adoption and implementation of a variety of tax incentive laws for the promotion and establishment of certain business activities. Such benefits, currently provided by Act 60 of 2019, generally provides for a 4% flat tax on its eligible income, which in some instances may be reduced up to 1% on the income generated from certain pioneer activities. In addition, while corporations generally may be required to withhold a 15% income tax on dividend distributions, dividends paid by corporations with tax benefits may be exempt from Puerto Rico taxes to the extent that those dividends are paid from earnings and profits from eligible activities.

In order to take advantage of the special tax regime provided by the tax incentive laws, corporations must obtain from the Puerto Rico government a tax incentive decree which will include the eligible activities, the tax benefits on the income and other taxes, the qualified period, and other requirements under Puerto Rico tax laws. The tax decrees are governed like a contract between the Government of Puerto Rico, the taxpayer and its shareholders. As such, tax decrees cannot be unilaterally amended or modified by the Government of Puerto Rico.

In 2010, Puerto Rico introduced Act 154-2010 (“Act 154-2010”) which established a 4% excise tax on the sales from manufacturing companies in Puerto Rico to their foreign affiliates. As part of the implementation of the excise tax, the U.S. Internal Revenue Service (“IRS”) published Notice 2011-29 providing that, pending the resolution of a number of legal and factual issues, the IRS would not challenge a taxpayer’s position that the tax paid to Puerto Rico by virtue of Act 154-2010 is a creditable tax. During 2020, the IRS issued regulations on the foreign tax credit limitation, which—in their application—would limit the foreign tax credit on the Act 154-2020 excise tax.

In light of such limitations, the Government of Puerto Rico enacted Act 52-2022 to amend tax incentives laws and provide a legal framework that would provide for taxpayers subject to the Act 154-2010 excise tax to be able to transition to an income tax regime. During 2022, the IRS issued [Notice 2022-42](#) revoking Notice 2011-29.

As part of the transition, and because the taxpayers affected by Act 154-2010 were covered by tax incentive decrees, the Government of Puerto Rico and the taxpayers were required to enter into new agreements to amend their tax decrees.

C) Impact of the Pillar Two GloBE Rules in Puerto Rico

Currently, Puerto Rico is not a member of the IF. The implementation of the GloBE Rules worldwide, however, may impact MNE Groups that have subsidiaries or a trade or business (i.e., a Permanent Establishment) in Puerto Rico in cases where they are operating under a tax incentive decree as described above.

Jurisdictions such as the United Kingdom, Japan, South Korea and most of the members of the European Union, among others, have in place an IIR that applies for fiscal years (i.e., the MNE Group’s accounting year) beginning in 2024. This means that MNE Groups with parent entities located in those jurisdictions with subsidiaries or a trade or business in Puerto Rico will be required to pay a Top-up Tax under the IIR, if their operations in Puerto Rico are subject to an ETR below 15%, unless they are subject to one of the exclusions under the GloBE Rules.

Other jurisdictions, such as the United States and China, have not introduced the GloBE Rules. However, it is expected that the UTPR will apply starting for fiscal years beginning in 2025 which means that any MNE Group with operations in Puerto Rico and operations in a jurisdiction that has implemented the UTPR will be required to pay the Top-up Tax if their operations in Puerto

Rico are subject to an ETR below 15%, unless they are subject to one of the exclusions under the GloBE Rules.

D) PROMESA

The Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”) was enacted by the United States Congress in 2016 to address the fiscal crisis in Puerto Rico. PROMESA established the Financial Oversight and Management Board for Puerto Rico (“FOMB”), which consists of seven members appointed by the President of the United States and one ex officio member appointed by the Governor of Puerto Rico.

PROMESA provides a legal framework for the restructuring of Puerto Rico’s debt. This was necessary because, unlike U.S. states, Puerto Rico did not have access to federal bankruptcy protection. PROMESA imposed an automatic stay on creditor litigation, preventing creditors from suing Puerto Rico for defaulting on its debt payments, and therefore allowed Puerto Rico to enter a process similar to bankruptcy to restructure its debt obligations.

Essentially, the FOMB has the authority to approve fiscal plans and budgets for the Government of Puerto Rico and its instrumentalities. PROMESA granted the FOMB certain powers that otherwise would be exercised by the Governor and Legislature. These powers primarily deal with fiscal plans, budgets, debt restructurings, and policies, rules, laws, and orders impacting the purposes of PROMESA.

In general terms, the fiscal plan under PROMESA provides estimates of revenues and expenditures to ensure public services, but also includes several recommendations and measures for the Government of Puerto Rico to implement. One of these measures is focused on changes in tax policy or tax reforms, and essentially requires that tax policy changes must be made in a manner that is revenue neutral. That is, all tax reductions must be accompanied by specific offsetting revenue or by offsetting reductions in government spending.

E) Public Consultation

The political agreement reached by member jurisdictions of the IF is that the GloBE Rules have the status of a common approach. This means that jurisdictions are not required to implement the GloBE Rules but, if they decide to do so, they have to implement them in accordance with the Model Rules and Commentary agreed by the IF.

Puerto Rico is not required to implement the GloBE Rules or make changes to its legislation in response to these provisions. However, the Department of Treasury is currently evaluating the impact of these rules in Puerto Rico and different policy options to maintain its competitiveness.

As part of this process, and in order to determine a path forward for the implementation of the GloBE Rules in Puerto Rico, the Department of Treasury is launching a Public Consultation to receive feedback from stakeholders, private sector organizations, advisors, academics, and the public in general on the impact of the Pillar Two Rules in Puerto.

Respondents are encouraged to use the same structure as this document to provide their comments (i.e., first include the question and then the response). Respondents should be concise in their responses and can provide data and any other useful information to support their answers. Respondents are encouraged to include any general or other comments unrelated to the specific questions at the end of their submission.

Any inquiries or requests for clarification on this document may be addressed or directed to:

Angel L. Pantoja-Rodríguez, Esq.
Assistant Secretary
Internal Revenue and Tax Policy Areas
Department of the Treasury
Government of Puerto Rico
Email: angel.pantoja@hacienda.pr.gov

The deadline to receive comments is October 10, 2024. The submission should be sent in PDF and word format to GlobalMinimumTax@hacienda.pr.gov.

SECTION 1. GENERAL POLICY CONSIDERATIONS

The Puerto Rico Department of Treasury is evaluating options on how to respond to the implementation of the GloBE Rules around the world, and is seeking input in relation to this decision-making process. The Department of Treasury is considering the following principles as part of this process:

- 1) making Puerto Rico a competitive destination for foreign investment;
- 2) safeguarding Puerto Rico's taxing rights by ensuring that if domestic profits are taxed somewhere in the world, they should be taxed in Puerto Rico;
- 3) complying with international standards such as the ones reflected in the GloBE Rules;
- 4) establishing a long-term solution that provides certainty to taxpayers and the government; and
- 5) complying with the neutrality principle under PROMESA¹.

The main objective of this process is to explore possible policy options that are tailored for Puerto Rico's circumstances and that can produce a balanced solution.

The main focus of section 2 is to receive input on the treatment of inbound investments (i.e., foreign MNE Groups operating in Puerto Rico through a legal entity or a trade or business). Emphasis is given to exploring a QDMTT or an alternative minimum tax in its different forms and other tax changes to Puerto Rico's tax legislation.

This section also seeks input on outbound or through-bound investments (i.e., investments made by parent entities located in Puerto Rico of domestic or foreign headquartered MNE Groups), which relates to the possible introduction of the IIR and UTPR.

Finally, this section seeks input on the design of incentives that are consistent with international standards such as the ones included in the GloBE Rules and that could coexist alongside a QDMTT or any other domestic tax.

A) General Considerations

The Department of Treasury is considering the principles described above as its guiding principles to evaluate the different policy options.

Additionally, it has focused its attention on inbound investments at this stage. This means that it is not considering the implementation of the IIR or UTPR at this moment. The effect of this policy decision is the following:

- MNE Groups headquartered in Puerto Rico will not be required to apply the IIR and therefore, could be potentially required to apply the IIR or UTPR in other jurisdictions in relation to Constituent Entities located in low-taxed jurisdictions;

¹ See: Chapter 3.2.4, [FOMB – Fiscal Plan for Commonwealth of Puerto Rico – Certified as of June 5, 2024](#).

- Parent Entities located in Puerto Rico of foreign headquartered MNE Groups will not be required to apply the IIR; and
- Puerto Rico will not collect any tax under the UTPR that it otherwise could have the right to collect.

Questions

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

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

B) Introducing a QDMTT

Generally, the QDMTT is intended to ensure that the Top-up Tax that would otherwise be collected under the IIR or UTPR is collected by the jurisdiction where the profits originate. It would safeguard Puerto Rico's taxing rights by protecting its domestic profits from the application of the IIR and UTPR. It will allow Puerto Rico to impose a tax and raise revenue in an international tax environment in which the corporate income tax floor for large multinationals has been increased to 15%. This means that a tax reform introducing a QDMTT is subject to less pressure from a competitive standpoint than any other tax reform that increases the tax liability given that tax would be otherwise collected in another jurisdiction.

Introducing a QDMTT as opposed to introducing a DMTT or another form of domestic minimum tax would have some benefits. In particular, a QDMTT allows full benefit of the SBIE. A DMTT with a 15% rate and an SBIE would most likely produce ETRs below 15%, which leaves room for the IIR or UTPR to apply. A QDMTT with an SBIE would effectively provide an exemption to the domestic profits covered by the SBIE without triggering Top-up Tax under the IIR or UTPR.

Another benefit is the reduction of the MNE Groups administrative burden due to standardization. A QDMTT that follows the GloBE Model Rules will most likely reduce the administrative burden of MNE Groups because the rules will be the same as the ones applied in other jurisdictions. Thus, MNE Groups will not be required to learn about new rules in Puerto Rico which provides greater certainty in an uncertain tax environment.

A well-designed QDMTT will also comply with international standards. It will allow Puerto Rico's legislation not to be challenged by other jurisdictions which would provide greater certainty to taxpayers and the tax administration.

Interaction with the U.S. Tax System

On December 11, 2023, the U.S. Department of the Treasury and the IRS released Notice 2023-80, announcing their intention to issue proposed regulations relating to the application of the foreign tax credit (“FTC”) rules to certain taxes imposed under the GloBE Rules.

If the tax imposed by Puerto Rico under the GloBE Rules is considered as a creditable tax under Notice 2023-80 and the regulations issued thereunder, then the general FTC limitations would apply in order to determine the amount creditable taxes. This means that the U.S.-headquartered companies could only credit the amount of taxes paid in Puerto Rico by its subsidiaries to the extent allowable under the CFC Rules, including under the GILTI regime which limits the amount of the FTC to 80% of the foreign taxes paid. This is known as the “GILTI haircut”, because the U.S.-headquartered companies end up reducing their FTC by 20% of the taxes paid abroad.

In order to address this issue, few jurisdictions have considered whether to implement an alternative minimum tax which allows the GILTI rules to apply first. One of the downsides of this position is that the tax will not be treated as a QDMTT by the IF given that the “pushdown” of CFC taxes is not allowed for the computation of a QDMTT. This means that the tax does not take the advantage of the SBIE.

The other downside is that the implementing jurisdiction loses revenue that is otherwise collected by another jurisdiction. This means that the implementing jurisdiction sacrifices up to 100% of the revenue of the QDMTT that would have been collected by the QDMTT to provide a tax advantage that is equivalent to 20% of the amount of the QDMTT.

An alternative way to maintain Puerto Rico competitive is by providing tax incentives that have a better treatment under the GloBE Rules and that comply with other international standards.

Subsection D further discusses introducing a DMTT or another form of domestic minimum taxes and contains questions related to their potential implementation in Puerto Rico.

Questions

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.

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?

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?

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

C) Design features of a QDMTT

To qualify as a QDMTT, the Top-up Tax computations under a DMTT need to mirror the GloBE Rules computations except where the Commentary on the QDMTT requires such computations to depart from the GloBE Rules (mandatory variations) or when the jurisdiction is allowed to deviate from particular GloBE provisions (optional variations). A DMTT without the mandatory variations will not be considered a QDMTT. A DMTT with optional variations can still be considered a QDMTT, but it will not have QDMTT Safe Harbour status or will be subject to the Switch-off Rule (which applies to turn off the QDMTT Safe Harbour status) unless those optional variations have been agreed by the IF as acceptable.

This section seeks input in relation to some optional variations.

Partially-owned Constituent Entities

Under a QDMTT, 100% of the Top-up Tax is imposed on the income of a Constituent Entity regardless the amount of ownership interests held by the Parent Entity in the Constituent Entity. In contrast, the Top-up Tax charged under an IIR depends on the amount of ownership interests held by the Parent Entity. This means that under some split-ownership structures, the overall tax liability of an MNE Group could be higher by applying the QDMTT instead of applying the IIR. Thus, under these structures, imposing a QDMTT could be seen as less competitive given that the tax liability of the MNE Group would be higher with a QDMTT. Jurisdictions can therefore decide not to apply the QDMTT in these particular circumstances. However, this would mean the QDMTT would not qualify for the QDMTT Safe Harbour, which is also considered as a competitive advantage due to a reduction of the administrative burden.

Joint Ventures

The decision on whether to apply a QDMTT to partially-owned Entities is the same with respect to Joint Ventures. However, if a jurisdiction decides to apply a QDMTT to Joint Ventures it has the option to decide whether the QDMTT charge is imposed directly on the Joint Venture or on a Constituent Entity of the main MNE Group. If the jurisdiction decides to apply the QDMTT to Constituent Entities of the main Group and not directly to the Joint Venture, the Switch-off Rule will apply so that the QDMTT Safe Harbour will not be available in this particular case.

Treatment of Stateless Entities

Flow-through Entities (i.e., entities that are fiscally transparent in the jurisdiction of incorporation or creation) are treated as Stateless Entities under the GloBE Rules. Income of these Entities (including partnerships) could be considered stateless income if such entities are not treated as fiscally transparent by the owners of the Entity. For example, the income of partnerships created under the laws of Puerto Rico could be treated as stateless income and subject to the IIR or UTPR under these circumstances. Alternatively, a jurisdiction could decide to apply the QDMTT to partnerships without changing their Corporate Income Tax treatment as fiscally transparent.

Investment Entities

Jurisdictions can decide not to apply their QDMTT to Investment Entities that are not fiscally transparent and are subject to Article 7.4, 7.5, or 7.6 of the GloBE Model Rules. This does not affect the QDMTT from benefiting from the QDMTT Safe Harbour. However, the Switch-off Rule will apply so that the QDMTT Safe Harbour will not be available in the particular case of these Investment Entities, which means that they could be subject to an IIR or the UTPR.

UPE's Financial Accounting Standard vs Local Financial Accounting Standard

The GloBE Rules require the computations to be made in accordance with the UPE's Financial Accounting Standard, with certain exceptions. However, jurisdictions have the option to decide whether they compute their QDMTTs in accordance with the UPE's Financial Accounting Standard or their Local Financial Accounting Standard.

The Local Financial Accounting Standard is the one permitted or required in a jurisdiction by the Authorized Accounting Body or pursuant to the relevant domestic legislation provided that such standard is an Acceptable Financial Accounting Standard or an Authorized Financial Accounting Standard adjusted to prevent Material Competitive Distortions, as defined by the GloBE Model Rules.

The application of the Local Financial Accounting Standard in the QDMTT computations is restricted. For example, the QDMTT legislation can only require the use of the Local Financial Accounting Standard where all Constituent Entities located in the jurisdiction have financial accounts based on that standard. If this condition is not met, the QDMTT legislation shall permit the use of the UPE's Financial Accounting Standard.

In the case of Puerto Rico, if a QDMTT is introduced, one option is to require the QDMTT computations in accordance with US GAAP provided that the Constituent Entities located in Puerto Rico have financial accounts in this standard.

Questions

Please answer these questions assuming that Puerto Rico were to implement a QDMTT.

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

a) Do you have partially-owned entities (including Joint Ventures) located in Puerto Rico?

b) What is your preference:

- (1) a QDMTT that benefits from the QDMTT Safe Harbour that applies to all Constituent Entities in Puerto Rico; or**
- (2) a QDMTT that does not benefit from the QDMTT Safe Harbour and that applies only in cases where the MNE Group's Constituent Entities in Puerto Rico are wholly-owned by the UPE or a Partially-owned Parent Entity?**

Please explain your answer.

c) If you have a Joint Venture in Puerto Rico, what is your preference:

(1) requiring the Joint Venture to pay the QDMTT and having access to the QDMTT Safe Harbour; or

(2) requiring a Constituent Entity of the main group to pay the QDMTT on behalf of the Joint Venture and not having access to the QDMTT Safe Harbour due to the application of the Switch-off Rule?

Please explain your answer.

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

Please explain your answer.

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

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?

Please explain your answer.

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.

D) Alternative Minimum Taxes

A different policy option is to implement an alternative minimum tax other than a QDMTT. This could take the form of a DMTT or some other form of domestic minimum tax (DMT). Any such tax would need to be considered a Covered Tax under the GloBE Rules in order to reduce or eliminate potential Top-up Taxes under the IIR and UTPR of other jurisdictions.

DMT in addition to CIT with a tax credit mechanism for current CIT taxes

A DMT could be designed to apply a statutory tax rate of 15% on a tax base that mirrors the GloBE Income. It could provide a tax credit for taxes paid in accordance with Act 135-1997, Act 73-2008, Act 60-2019, and Act 52-2022, as well as foreign income taxes applied on foreign sourced income. A DMT in this form, however, would not include a mechanism to address timing differences

between the CIT and financial accounting because it would not have an ETR calculation that considers deferred tax expenses reported in the financial statements.

DMT substituting for CIT

Alternatively, a DMT could replace Act 135-1997, Act 73-2008, Act 60-2019, and Act 52-2022 and apply a statutory rate of 15% on a tax basis that mirrors the GloBE Income. This would avoid any need to address timing differences between the Puerto Rico's CIT and financial accounting and avoids applying different CIT legislations in Puerto Rico, which could help reduce the administrative burden for both the tax administration and taxpayers. In the case of foreign sourced income, a foreign tax credit could be provided for foreign income taxes.

DMTT in addition to CIT

As an option, an alternative minimum tax could be designed as a DMTT (i.e., a top-up tax with an ETR calculation) except that it could depart from particular aspects from the GloBE Rules that would disqualify it from being a QDMTT. For example, it could allow the push-down of CFC taxes or could apply to a narrower set of taxpayers.

As discussed above, providing an exemption equivalent to the SBIE in a DMTT would not produce the same effects as in a QDMTT because the tax would be part of the ETR calculation instead of being directly credited against the GloBE Top-up Tax liability that could arise in another jurisdiction. Additionally, adopting a DMTT would require MNE Groups to be subject to at least three tax calculations: Puerto Rico's CIT, Puerto Rico's DMTT and the GloBE computations in other jurisdictions.

Questions

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.

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.

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

E) Tax Incentives and grants

The impact of tax incentives on the GloBE computations depends on the mechanism through which the incentive is provided and the conditions to be eligible for the incentive. For example, a tax incentive in the form of an exemption or a tax reduction will have a higher negative impact in the ETR of a jurisdiction. A tax incentive that promotes investing in assets and hiring employees could have less impact because of the SBIE. In most cases, tax incentives will reduce the amount

of taxes paid in a jurisdiction, which has a significant impact on the ETR computation because it reduces the numerator of the calculation.

On the other hand, if the government incentivizes activities through grants and subsidies, these are commonly considered as income for accounting purposes, which means that they have a lower impact on the ETR calculation because they increase the denominator of the equation.

Under the GloBE Rules, qualified refundable tax credits (“QRTCs”) have the same treatment as grants, which means that they have a more favorable treatment. However, in order to qualify as QRTCs, governments need to pay taxpayers cash or cash equivalents within four years from when the conditions of the credit are satisfied, if the credit exceeds the taxpayer’s tax liability. This puts pressure on the finances of a government because granting a QRTC could require a disbursement of cash to taxpayers. In the case of Puerto Rico, careful thought needs to be given to QRTCs or subsidies given, in order to comply with the neutrality principle under PROMESA².

The Department of Treasury is exploring whether existing tax incentives could be modified or exchanged for QRTCs or other incentives that better align with the GloBE Rules in order to reduce the impact in Puerto Rico’s ETR computation. These tax incentives could be provided against the corporate income tax liability.

Additionally, the Department of Treasury is exploring the introduction of other tax regimes that have beneficial treatment under the GloBE Rules and that could provide an incentive for MNE Groups to invest in Puerto Rico. As an example, Article 3.2.2 of the GloBE Rules allows for an additional deduction for stock-based compensation based on the market value of the stock when the option is exercised when the deduction is granted for tax purposes.

Benefits not related to the introduction of the GloBE Rules

Consideration is being given to tax incentives and other benefits that could help Puerto Rico attract and retain foreign investment. However, replacing or introducing new subsidies or tax incentives in exchange for increasing the tax liability through a QDMTT or any other tax could jeopardize the tax from being considered a QDMTT or a Covered Tax under the GloBE Rules.

While Pillar Two does not limit the sovereign right of Puerto Rico to provide benefits, careful consideration is being given to the design of tax incentives and other benefits to comply with the GloBE Rules, other international standards, and PROMESA. For example, providing benefits only to in-scope MNE Groups would most likely disqualify a new minimum tax from being a QDMTT or a Covered Tax.

Therefore, careful consideration is being given to tax incentives or grants for a wider group of taxpayers or to investment in key areas to continue attracting and retaining investment in Puerto Rico.

² See: Chapter 3.2.4, [FOMB – Fiscal Plan for Commonwealth of Puerto Rico – Certified as of June 5, 2024](#).

For example, investing the revenue of a QDMTT or other form of domestic minimum tax in electrical infrastructure to reduce prices could benefit all companies operating in Puerto Rico including in-scope MNE Groups. Alternatively, providing refundable tax credits in connection to energy costs or investment could also could help companies, including in-scope MNE Groups.

While it is recognized that different industries have different costs and needs, this public consultation is seeking f input on opportunity areas where the government can invest or provide benefits to help companies increase their revenues or reduce their costs to make Puerto Rico more competitive. Special consideration will be given to those opportunities that have a direct impact on the lives of the people of Puerto Rico.

Questions

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

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?

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?

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?

SECTION 2. GENERAL LEGAL CONSIDERATIONS

A) Legislating by reference

While introducing the GloBE Rules, jurisdictions are free to determine the best way to legislate depending on their legal system. Some jurisdictions have opted to legislate by reference to the GloBE Model Rules published by the OECD/G20 Inclusive Framework. This means that the tax base is not explicitly described in law and the tax is computed by reference to a document published by an international organization. Possible advantages of this approach could include:

- the tax base will always be the same as the one provided under the GloBE Model Rules;
- less risk of inconsistencies in the translation and transposition of the relevant GloBE Model Rules;
- greater certainty to MNE Groups on how to interpret the rules given that they will be the same as the ones included in other jurisdictions that follow the GloBE Model Rules;
- the Commentary of the GloBE Model Rules can be used to understand how the rules operate; and

- reduces the administrative burden of drafting and updating legislation to reflect changes made to the GloBE Model Rules.

Possible disadvantages of this approach could include:

- Puerto Rico would have no control over changes made by the IF to the GloBE Model Rules;
- the rules could not be adapted into the circumstances of Puerto Rico where appropriate (e.g., excluding provisions that are not relevant for Puerto Rico’s calculations);
- the official GloBE Model Rules are only published in English and French; and
- Puerto Rico is not a member of the IF.

Questions

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

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

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?

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

B) Referring to a currency other than the U.S. Dollar

The official currency in Puerto Rico is the U.S. Dollar. The thresholds in the GloBE Model Rules are in Euros (e.g., the €750 million revenue threshold to determine in-scope MNE Groups). If a QDMTT or another other form of domestic minimum tax is adopted, referring to the Euro in the legislation would provide greater consistency with the GloBE Rules and avoids having special rules for annually updating the thresholds in the law.

Question

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?

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

C) Retroactive legislation – applying the rules in 2024

The Department of Treasury acknowledges that there are no more ordinary legislative sessions for the current Legislative Assembly in Puerto Rico. However, the Department of Treasury is seeking feedback on legal, accounting, and administrative aspects for MNE Groups if legislation introducing a QDMTT or another form of domestic minimum tax and tax incentives is applied retroactively.

Questions

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?

D) Interaction between a minimum tax legislation and the existing tax incentive decrees

A QDMTT or another form of domestic minimum tax could apply in addition to the existing corporate income tax regime, which includes the existing tax incentive decrees. However, similar to the interaction between the existing tax law and the tax incentive decrees, the introduction of a domestic minimum tax legislation may require the Government of Puerto Rico and the taxpayers to amend or modify such tax decrees. Careful consideration must be given to the fact that tax decrees are governed like a contract between the Government of Puerto Rico, the taxpayer and its shareholders. As such, in accordance with Article II, Section 7 of the Puerto Rico Constitution, tax decrees cannot be unilaterally amended or modified by the Government of Puerto Rico.

If such tax decrees are amended or modified, that should not affect the status of a QDMTT or another form of domestic minimum tax under Pillar Two. For example, some taxpayers could decide to continue benefiting from the existing decrees while others may prefer to transition into a new legal framework designed to implement the GloBE Rules in Puerto Rico. In this scenario, a QDMTT would not lose its qualification status. However, MNE Groups that elect to continue operating under the existing regime may still be subject to the GloBE Rules in other jurisdictions given that the QDMTT would not be considered as “payable” in Puerto Rico (see paragraph 20.1 of the Commentary to Article 5.2.2 of the GloBE Model Rules).

While MNE Groups that are protected by the tax incentives decrees would be able to elect to transition into the new framework, they would not be able to decide on which fiscal years they would be subject to the new rules. This avoids having an optional payment system that could potentially disqualify the domestic minimum tax from being considered a QDMTT or a Covered Tax.

In this context, the Department of Treasury is seeking input on how the existing tax incentive decrees would interact with a new regime that would include a domestic minimum tax, such as a QDMTT or another form of domestic minimum tax, as well as a new tax incentive package applicable to a broader group of taxpayers (i.e., not only in-scope MNE Groups).

Question

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?