TAX EXEMPTION

Pillar Two's safe harbour: practical challenges

Écrit par
Deloitte Luxembourg

Publié à 06:00

Olivier Buscheman, Partner at Deloitte Luxembourg Credit: Studion Photography

Écoutez cet article

0:00 / 4:06 1X

As the digital economy expands beyond geographical lines, international companies are facing rising scrutiny about their tax strategies. One example is the Global Anti-Base Erosion Model Rules (GloBE), a two-pillar solution by the OECD/G20 Inclusive Framework, to ensure large businesses pay their share of taxes wherever they operate.

This article lays out the implications of these rules, from policy details to practical challenges, especially the Pillar Two safe harbour rules.

Background on Pillar Two

GloBE's Pillar Two mandates a global minimum 15% tax rate on the income of multinational enterprises (MNEs) with annual revenues exceeding €750 million. This consensus, agreed upon by over 130 jurisdictions around the globe, aims to restrict profit shifting and foster a more equitable international tax landscape.

Transitional relief and safe harbour rules

To ease the Pillar Two transition, the OECD introduced safe harbour rules that temporarily exempt MNEs operating in certain low-risk jurisdictions from the detailed GloBE calculations.

These rules are based on specific criteria:

· Revenue and profit thresholds (de minimis test);

· Simplified effective tax rates (ETR test); and a routine profit test.

However, additional safe harbour rules were introduced and developed in July and December 2023, complicating an already challenging landscape.

Practical challenges in applying safe harbour rules

To calculate whether an MNE's jurisdiction can apply the safe harbour rules for a specific financial year, the Country-by-Country Report (CbCR) and that year's financial accounts must be used. However, as the CbCR's filing deadline is typically 12 months after the fiscal year reporting has ended, it can be challenging to gather sufficient information during the income tax provisioning process and prepare the GloBE Information Return.

For the purposes of the income tax provisioning process, practical solutions include relying on prior-year CbCR information or an average thereof to determine whether taxpayers meet the safe harbour rules. Alternatively, taxpayers could provide a forecasted CbCR for the income tax provision calculation. Engaging in proactive discussions with tax authorities and auditors is also critical to navigating these complexities effectively.

Furthermore, the GloBE Information Return should be filed within 15 months after year-end. If the CbCR is filed close to its deadline (i.e. 12 months after year-end), this could leave a short three-month window to test the safe harbour rules and compute and prepare the GloBE Information Return. These three months could also overlap with other financial reporting deadlines and requirements, further straining existing resources.

To avoid running out of time, MNEs should assess the feasibility of meeting these tight timelines and consider ensuring their CbCR is available well in advance.

Looking forward

Careful assessment and proactive planning are essential for MNEs to navigate these challenges, as the practical application of the Pillar Two rules will prove complex. Looking ahead, businesses will need to prepare and adapt to the Pillar Two rules as part of the global tax landscape's continued evolution in the digital age.

Understanding Pillar Two is challenging yet essential. If you need further information about GloBE, we at Deloitte Luxembourg are here to help. Our team of tax professionals can offer the guidance and solutions you need to adapt to Pillar Two regulations smoothly. Feel free to reach out to us and to visit our website.