

Substance-Based Income Exclusion from GloBE/Pillar Two Minimum Tax

October 8, 2024

On behalf of the undersigned organizations, representing globally engaged businesses across various sectors, we are writing to request additional guidance regarding the application of the Substance-Based Income Exclusion ("SBIE") from the GloBE/Pillar Two minimum tax with respect to mobile (or "interjurisdictional") assets and employees.

Further to our letter of December 8, 2023, we understand that the OECD has been developing additional guidance on the application of the SBIE to mobile assets and employees. As previously noted, the July 2023 Administrative Guidance would put taxpayers with mobile assets and employees at a material competitive disadvantage relative to taxpayers that deploy assets and employees primarily in one jurisdiction. Such competitive disadvantage would be exacerbated by the fact that taxpayers in industries with mobile assets (and employees) have significant capital invested in such mobile assets given the capital-intensive nature of the affected businesses. Industries that use the following types of mobile assets would be benefitted by such guidance: ships, aircraft, drill rigs, satellites. Therefore, we are fully supportive of additional guidance that would apply broadly across various industry sectors, as set forth below.

We recommend the following rule for "Mobile Eligible Tangible Assets" (as defined below). For purposes of article 5.3.4 of the Model Rules, a Constituent Entity owner will be entitled to the tangible asset carve-out with respect to Mobile Eligible Tangible Assets if:

1. At least 50% of the carrying value of Eligible Tangible Assets of all Constituent Entities located within the same jurisdiction (including the Constituent Entity owner of such assets) consists of Mobile Eligible Tangible Assets; and
2. The Constituent Entity owner of such assets performs significant people functions with respect to such assets in the jurisdiction where such Constituent Entity is considered to be located pursuant to article 10.3 of the Model Rules.

We recommend defining Mobile Eligible Tangible Assets as those Eligible Tangible Assets that are deployed outside the jurisdiction of the Constituent Entity owner during the Fiscal Year for more than 70% of the days in a given Fiscal Year. A Mobile Eligible Tangible Asset shall be deemed to be deployed outside the jurisdiction of the Constituent Entity owner on a given day if the asset is outside that jurisdiction at any time during that day. In addition, the term "Eligible Tangible Asset," as defined in article 5.3.4 of the Model Rules, shall be construed without regard to references in article 5.3.4 to the location of the asset. For purposes of applying the 50% test, Eligible Tangible Assets owned by all Constituent Entities (including the Constituent Entity owner) located within the same tested jurisdiction shall be aggregated.

We also recommend a rule for Eligible Payroll Costs for purposes of article 5.3.3 of the Model Rules with respect to employees who perform functions on board a Mobile Eligible Tangible Asset. Specifically, the rule would apply to "Mobile Employees," which are "Eligible Employees" (as defined in article 10 of the Model Rules) that typically operate, utilize, or perform their duties on board a Mobile Eligible Tangible Asset as part of their activities for the Constituent Entity employer during the Fiscal Year. To determine the payroll carve-out for Mobile Employees as included in article 5.3.3, we recommend calculating the

part of the Eligible Payroll costs that is taken into account is calculated by dividing the amount of days the Mobile Eligible Tangible Asset is deployed outside any jurisdiction or in multiple jurisdictions in a given Fiscal Year by the total days in a Fiscal Year, and applying the resulting percentage to the Eligible Payroll costs with respect to such employees related to the Mobile Eligible Tangible Asset (e.g., crew), whereby a month is assumed to have 30 days and a Fiscal Year 360 days.

While the above recommended rule would address the SBIE concern for many industries with significant mobile assets and employees, it would not necessarily solve the issue for all groups that deploy mobile assets and employees.

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We appreciate your consideration of our proposal and would be pleased to meet with you at your convenience to discuss further.

Sincerely,

Cruise Lines International Association
National Foreign Trade Council