



Tax Insights

OECD Pillar Two: Information return and safe harbours

Snapshot

On 20 December 2022, the OECD [published](#) an implementation package in respect of the Pillar Two global minimum tax rules ("Pillar Two"). The package includes:

- Guidance on safe harbours;
- A public consultation document on the GloBE information return ("information return"); and
- A public consultation document on tax certainty.

This follows the [statement](#) on the components of global tax reform, agreed by more than 135 members of the [OECD/G20 Inclusive Framework on BEPS](#) ("OECD inclusive framework") in October 2021, and the publication by the OECD inclusive framework of [model rules](#) for Pillar Two in December 2021 and [commentary](#) in March 2022.

Relevantly for Australia, Pillar 2 is expected to commence from 2024.

Background: The income inclusion rule and undertaxed profits rule

The OECD model rules apply to large multinational groups with annual consolidated group revenue of at least EUR 750 million (approx. AUD 1.1 billion) and have the following key components:

- **An income inclusion rule (IIR)** applies on a top-down basis such that tax may be paid by the ultimate parent company to the tax authority in its home country. The tax due is the “top-up” amount needed to bring the overall tax on the profits in each country where the group operates up to the minimum effective tax rate of 15%.
- The **undertaxed payments rule (UTPR)** will apply as a secondary (backstop) rule in cases where the effective tax rate in a country is below the minimum rate of 15%, but the IIR has not been fully applied. The top-up tax is allocated to countries which have adopted the undertaxed payments rule based on a formula, and is to be implemented by countries either by denial of a deduction for payments or by making an equivalent adjustment.
- The OECD model rules also allow for countries to introduce a **qualified domestic minimum top-up tax (QDMTT)** aligned with Pillar Two. Top-up taxes in respect of any low-taxed profits of a group’s entities in that country would then be paid to the local tax authority, rather than to other countries under the IIR or UTPR.

For more information on the above rules please also refer to our Tax Insights issued on 21 December 2021 [here](#).

Information return

The OECD is in the process of developing a **standardised information return**. It is recognised that a balance is needed between providing tax authorities with sufficiently comprehensive information whilst avoiding unnecessary compliance requirements for businesses. Work to date has focused on the identification of a comprehensive set of data points required for a group to calculate its top-up tax liability under the OECD model rules, including:

- **General information about the group** (determined by consolidated financial statements) and filing entity:
 - Group name and reporting fiscal year;
 - Identification of the filing entity; and
 - Group general accounting information.
- **Corporate structure:**
 - Ultimate parent entity details;
 - Group entities and members of joint ventures including information in respect of tax identification numbers (TINs), ownership structure, application of the income inclusion and undertaxed profits rules to the entity;
 - Excluded entities (such as pension funds and not-for-profit entities); and
 - Changes in the corporate structure that occurred during the reporting fiscal year.
- **Effective tax rate (ETR) computation and top-up tax:**
 - Identification of subgroups, e.g., a joint venture group;
 - Jurisdictional exceptions to reduce top-up tax to zero, e.g., use of safe harbours or de minimis exclusion. Jurisdictional information:
 - Effective tax rate and top-up tax, including the GloBE income or loss (Pillar Two tax base), covered taxes, and substance-based income exclusion;
 - Deferred tax adjustments, including recapture data and amounts brought in on transition; and

- Jurisdictional elections (if any), e.g., stock based compensation.
- Entity information:
 - GloBE income or loss (Pillar Two tax base);
 - Covered taxes;
 - Entity elections (or elections that apply to a joint venture group), e.g., to adjust for fair value accounting; and
 - International shipping income to be excluded.
- **Top-up tax allocation and attribution:**
 - Identification of the low-tax country;
 - Application of the income inclusion rule; and
 - Undertaxed profits rule top-up tax amount for the country.

The deadline for filing the information return is **15 months after the year end**, extended to 18 months for the first year in which a group is in scope. Groups will also be subject to local tax filing and payment obligations, in domestic legislation.

The OECD inclusive framework will continue to work on the development of centralised filing requirements allowing for the information return to be filed with the tax authority of the ultimate parent entity (or another designated filing entity). The information return will be automatically exchanged with the tax authorities of countries in which other group entities are located. Consideration is being given to segmenting the information reported where not all tax authorities require all the group's information and tax calculations to assess any top-up tax liability.

Consideration is also being given to a coordinated framework for tax authority information requests and coordinated tax authority risk assessment in respect of information returns received.

Safe harbours

Transitional country-by-country (CbC) reporting safe harbour

The transitional safe harbour is a short-term measure to exclude a group's operations in lower-risk countries from the compliance obligation of preparing full Pillar Two calculations. It applies for years beginning on or before 31 December 2026 (i.e., three years for most groups).

The transitional safe harbour uses information taken from a business's CbC report and/or financial statements to determine whether its operations in a country meet any of three tests:

- **De minimis test:** The business reports total revenues of less than EUR 10 million and profit before income tax of less than EUR 1 million on its CbC report for a country.
- **Effective tax rate test:** The business has a "simplified ETR" for a country that is equal to or greater than the "transition rate" for the year.
 - The transition rate is 15% for years beginning in 2023 and 2024, increasing to 16% and then 17% for years beginning in 2025 and 2026 respectively.
- **Routine profits test:** The business's profit before income tax in a country is equal to or less than the "substance-based income exclusion amount" (as calculated under the OECD model rules).

Where the transitional safe harbour applies, and any of these tests are satisfied, the top-up tax for that country will be zero.

The business's CbC report is required to be prepared and filed using qualified financial statements. Qualified financial statements include both the consolidated financial statements of the ultimate parent entity, and the separate financial statements of each group entity (provided these are prepared in accordance with an acceptable or authorised financial accounting standard and are reliable).

The simplified ETR for the purposes of the effective tax rate test is calculated by dividing the country's "simplified covered taxes" by its profit before income tax as reported on the CbC report. Simplified covered taxes are based on financial statements data, not CbC data. They comprise a country's income tax expense as reported on the business's financial statements (excluding taxes that are not Pillar Two covered taxes and eliminating any uncertain tax positions).

A "once out, always out" approach will apply: if a business has not applied the transitional safe harbour to a country in one year, it cannot use the safe harbour for that country in a subsequent year.

A number of special rules may apply to exclude certain entities in specific circumstances such as where:

- There are joint ventures or joint venture subsidiaries;
- There are entities held for sale;
- The ultimate parent entity is a flow-through entity or is subject to a deductible dividend regime;
- A business is "multi-parented"; or
- A business includes investment entities or insurance investment entities, stateless entities, or entities subject to eligible distribution tax systems.

There is also a special rule that requires "net unrealised fair value losses" arising from changes in fair value of shareholdings (ownership interests) to be excluded if the loss exceeds EUR 50 million (approx. AUD 78 million) in a country.

Potential permanent safe harbours: Simplified calculations

The report sets out a framework for the future development of permanent safe harbours—"simplified calculations safe harbours"—that, if agreed, would reduce the number of computations and adjustments a business is required to make.

The framework envisages that future guidance would set out simplified calculation rules to enable businesses to demonstrate for a country that:

- The GloBE income is equal or less than the amount of the substance-based income exclusion;
- Revenue is less than EUR 10 million (approx. AUD 15.6 million), and income (profits) are less than EUR 1 million (approx. AUD 1.5 million) (i.e., that the country qualifies for the de minimis exclusion within the OECD model rules); or
- The effective tax rate is at least 15%.

For example, the simplified calculations safe harbour will apply for non-material constituent entities excluded from consolidated financial statements solely on size or materiality grounds. Simplified source of information rules, and calculations of revenue, income, and tax amounts, will apply to these entities, using CbC reporting data.

The OECD inclusive framework are also considering a safe harbour for businesses which prepare a qualified domestic minimum top-up tax calculation under local rules.

Transitional penalty relief

Transitional penalty relief will require tax authorities to give "careful consideration" before applying penalties where a group has taken reasonable measures to apply the global minimum tax rules. Relief will apply for years beginning on or before 31 December 2026 (i.e., three years for most groups).

Tax certainty

The global minimum tax rules include a number of mechanisms to facilitate consistent and coordinated adoption, but differences could still arise in the interpretation or application of domestic rules among different tax authorities. The OECD inclusive framework is exploring mechanisms to provide increased tax certainty, including dispute prevention mechanisms such as:

- Reliance on the OECD model rules, commentary, and guidance to support consistency in the application of the rules, noting there may be interpretative questions that have not been considered or resolved.
- A multilateral review process to determine whether a country has implemented a “qualified” income inclusion rule, undertaxed profits rules, and/or domestic minimum top-up tax.
- Tax authority referral to the OECD inclusive framework for clarification of questions of general interpretation through the release of guidance.
- Common risk assessment and coordinated compliance programs, e.g., similar to the OECD International Compliance Assurance Program (ICAP).
- Binding certainty mechanisms, including bilateral and multilateral advance pricing arrangements (APAs).

Dispute resolution mechanisms are also being explored, including:

- How existing mutual agreement procedure (MAP) rules in double tax treaties could be adapted as the basis for dispute resolution;
- The scope of disputes covered, e.g., where the dispute has resulted in double taxation;
- The basis for resolving disputes, e.g., the use of the OECD model rules, commentary, and guidance as the common standard for competent authorities to reach an agreement; and
- Possible instruments available for a dispute resolution mechanism, including: a new multilateral convention; under the Convention for Mutual Administrative Assistance in Tax Matters; under existing tax treaties; or a common dispute resolution mechanism in domestic law.

Next steps

The OECD inclusive framework expects to release further guidance on the interpretation and administration of the global minimum tax rules on a rolling basis, with the first installment expected to be released in early 2023. Work will also continue on the treaty-based subject to tax rule, to apply to selected intragroup payments from developing countries.

Deloitte comments

The documents released cover the compliance and administration aspects of the global minimum tax rules, an area that is a significant concern for businesses.

The work on the Pillar Two information return has focused to date on the information and data that may (subject to the design of the final information return) need to be collected and reported. The OECD inclusive framework is looking for businesses’ input on a range of questions, including the data requested, potential simplifications, and input on the potential interaction with local qualified domestic minimum top-up tax regimes.

The data list is in table form and, as an approximate guide, includes four pages of “group” data, 10 pages of data that will be required by country, six pages of data that is required by entity, and two pages of calculation of top-up tax by country.

The OECD has indicated that the income inclusion rule is expected to take effect from 2023. The income inclusion rule will apply in some countries, including the UK and the EU, for years beginning on or after 31 December 2023. This will require that the Australian legislated form of the model rules are passed into law in Australia. Australia is currently consulting as to its adoption timeline, but is likely to adopt the IIR on or shortly after this date.

Businesses will want to understand the data needed on a real-time basis when the rules take effect in 2024, even though returns will not, except in rare circumstances, need to be filed until 30 June 2026. The intention is that the information return will be filed centrally with one tax authority (usually the parent or intermediate parent country tax authority) and exchanged with other tax authorities. This will require an XML schema to facilitate exchange, and suitable competent authority exchange agreements to be in place between countries. Experience from the introduction of CbC reporting is that early finalisation of such exchange agreements, on a multilateral or bilateral basis, will be important to prevent local filing requirements and last minute compliance process changes.

The OECD inclusive framework's work on safe harbours will be essential to minimising the compliance burden for businesses, at least in the transitional years. Such simplifications, particularly using CbC reporting data for income and financial statements data for tax to calculate a simplified effective tax rate, will be very helpful for many groups for, broadly, the first three years of the rules. Businesses will be pleased that CbC reports prepared using either group financial statements data or local financial statements data (under an appropriate GAAP) are acceptable, allowing existing "top-down" or "bottom-up" approaches to CbC reporting to be maintained. It is important that safe harbours, whether transitional or longer term, are mirrored in all countries' local rules for a qualified domestic minimum top-up tax.

The African Tax Administration Forum (ATAF) recently released a *Suggested Approach to Drafting Domestic Minimum Top-Up Tax Legislation* which includes scope for adding safe harbours to reduce the compliance burden. Longer term, it remains to be seen if the OECD inclusive framework can agree simplifications that will be meaningful for a wide range of groups.

Further work is needed by the OECD inclusive framework to finalise approaches to dispute prevention and resolution. Any such processes will need to be legally binding on countries via an internationally agreed legal instrument to have effect. One approach would be via a double tax treaty "wrapper" for Pillar Two to support the rules implemented domestically by countries.

There remains ongoing work on the subject to tax rule, a type of withholding tax on selected intragroup payments from developing countries to low-tax jurisdictions, and also on further clarification of technical aspects of the global minimum tax rules. This will be achieved via updates to the commentary originally published in March 2022, with the first update expected in early 2023.

Australian perspective

Treasury consultation

On 4 October 2022, the Australian Treasury released a consultation paper titled [Global agreement on corporate taxation: addressing the tax challenges arising from the digitalisation of the economy](#).

The purpose of the consultation paper was to seek views from interested parties on how Australia can best engage with the two-pillar solution to address the tax challenges arising from the digitalisation of the economy developed by the OECD Inclusive Framework on Base Erosion and Profit Shifting, including the Pillar Two model rules and commentary. The consultation closed on 1 November 2022.

Specifically, consultation will help inform consideration of domestic implementation issues, such as interactions with Australia's existing corporate tax system, ways to minimise compliance costs, and the implementation of a domestic minimum tax. The feedback also may influence various ongoing negotiations on design elements.

Questions 17 to 40 of the consultation paper focus on the Pillar Two GloBE model rules, and relate to the following design aspects:

- Mode, timing, and readiness of implementation;
- Imposing the top up tax liability;
- Administrative provisions;
- GloBE information return;
- Safe harbours;
- Interaction with integrity provisions;
- Corporate restructuring under GloBE;
- Tax paid under the GloBE model rules and imputation; and
- Domestic minimum tax.

ATO preparations for Pillar Two

On 7 December 2022, Deputy Commissioner, Hector Thompson, delivered a speech to the International Tax Conference 2022 in Jakarta in which he outlined the ATO's plans for the development and implementation of Pillar Two, the Global Anti-Base Erosion (GloBE) rules.

- The ATO has started preliminary preparations with a focus on how the new rules will affect lodgement and systems upgrades, the ATO's internal capability, what guidance materials will be necessary, and the relevant client engagement, verification, and assurance processes.
- The ATO is looking to identify the most appropriate technology infrastructure for efficient and secure information exchanges of GloBE information packages and returns. The ATO also expects new tax software to be introduced into the market for multinational enterprises to comply with the GloBE rules, although this software is unlikely to be global or standardised.
- Due to the role that financial statements and accounting concepts play in the GloBE rules, those administering the rules will need to understand tax effect accounting. The ATO is anticipating the need to recruit and/or redeploy staff with relevant capability and experience with preparing statutory accounts in accordance with accounting standards. It also is developing tailored capability programs that can support existing staff to develop the necessary expertise to undertake this work. The ATO expects that Australian based taxpayers and advisers will be simultaneously seeking to build their capability in this area, and thus there will be significant demand for these skills.
- The ATO is also considering how it can best support the Australian market in adapting to the new rules. This includes technical and practical administrative guidance to support taxpayers and advisers to understand and comply with the rules. This public guidance will be complemented by one-to-one guidance and support provided through direct engagement with taxpayers and advisers.
- The ATO's existing processes to provide formal binding private advice to taxpayers will be available and this will be supplemented by informal engagements and requests for generic advice provided by dedicated specialists teams in the ATO.
- Whilst the overall administrative approach will be guided by the OECD's implementation framework and domestic legislation, the ATO is consulting broadly to better understand the likely resourcing needs and develop a compliance program tailored to the Australian market. It will be looking to reduce the compliance burden wherever possible for in scope taxpayers by leveraging off existing compliance programs, integrating GloBE reviews into existing processes, and coordinating information requests.

Contacts

David Watkins

Partner

Tel: +61 2 9322 7251
dwatkins@deloitte.com.au

Amelia Teng

Partner

Tel: +61 3 8486 1118
amteng@deloitte.com.au

Vik Khanna

Partner

Tel: +61 3 9671 6666
vkhanna@deloitte.com.au

Claudio Cimetta

Partner

Tel: +61 3 9671 7601
ccimetta@deloitte.com.au

Cindy Perryman

Partner

Tel: +61 3 8486 1231
cperryman@deloitte.com.au

Wendy Hartanti

Partner

Tel: +61 2 9322 3625
whartanti@deloitte.com.au

Melanie Earl

Partner

Tel: +61 2 9322 5182
mearl@deloitte.com.au

Geoff Gill

Partner

Tel: +61 2 9322 5358
gegill@deloitte.com.au

Liam O'Brien

Director

Tel: +61 3 9671 7905
liobrien@deloitte.com.au

This publication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively the 'Deloitte Network') is, by means of this publication, rendering professional advice or services.

Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities. DTTL (also referred to as "Deloitte Global") and each of its member firms and their affiliated entities are legally separate and independent entities. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax, and related services. Our network of member firms in more than 150 countries and territories serves four out of five Fortune Global 500 companies. Learn how Deloitte's approximately 286,000 people make an impact that matters at www.deloitte.com.

About Deloitte Asia Pacific

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities provide services in Australia, Brunei Darussalam, Cambodia, East Timor, Federated States of Micronesia, Guam, Indonesia, Japan, Laos, Malaysia, Mongolia, Myanmar, New Zealand, Palau, Papua New Guinea, Singapore, Thailand, The Marshall Islands, The Northern Mariana Islands, The People's Republic of China (incl. Hong Kong SAR and Macau SAR), The Philippines and Vietnam, in each of which operations are conducted by separate and independent legal entities.

About Deloitte Australia

In Australia, the Deloitte Network member is the Australian partnership of Deloitte Touche Tohmatsu. As one of Australia's leading professional services firms, Deloitte Touche Tohmatsu and its affiliates provide audit, tax, consulting, and financial advisory services through approximately 8000 people across the country. Focused on the creation of value and growth, and known as an employer of choice for innovative human resources programs, we are dedicated to helping our clients and our people excel. For more information, please visit our web site at <https://www2.deloitte.com/au/en.html>.

Liability limited by a scheme approved under Professional Standards Legislation.

Member of Deloitte Asia Pacific Limited and the Deloitte Network.

© 2023 Deloitte Touche Tohmatsu